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Domestic Violence

Senate Subcommittee on Administration of Justice

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FIRST REPORT OF THE ADVISORY COMMISSION ON FAMILY LAW
TO THE
SENATE SUBCOMMITTEE ON ADMINISTRATION OF JUSTICE



DOMESTIC VIOLENCE

California Legislature

SENATE SUBCOMMITTEE
on
ADMINISTRATION OF JUSTICE

SENATOR JERRY SMITH

Chairman

NON-CIRCULATING

October 23, 1978

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1978
no. 1

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The Superior Court

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF
ROBERT FAIRER, JUDGE

TELEPHONE
(213) 974-1234

October 24, 1978

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The Honorable Jerry Smith, Chairman
Senate Subcommittee on Administration
of Justice
3056 State Capitol
Sacramento, California 95814

Dear Senator Smith:

Your Advisory Commission on Family Law transmits herewith its first report recommending legislation modifying the Family Law Act of 1969. The attached report recommends legislation to expand remedies available to victims of domestic violence.

The attached report was unanimously adopted by the Advisory Commission at its meeting held on October 23, 1978, with one member absent.

The Advisory Commission wishes to extend its deep appreciation to Nanci Clinch, of the San Diego Bar, and Mark Portman, of the San Jose Bar, for their untiring efforts in the preparation of this report for the Subcommittee.

Very truly yours,



Robert Fairer, Chairperson
Advisory Commission on Family Law,
Senate Subcommittee on Administration of Justice

Enclosure
RF:cg

80-10-429

MEMBERS OF THE
ADVISORY COMMISSION
ON
FAMILY LAW
TO THE
SENATE SUBCOMMITTEE ON
ADMINISTRATION OF JUSTICE

FAINER, ROBERT (Chairperson)
Judge of the Superior Court
Los Angeles, California

KAY, HERMA HILL (Vice-Chairperson)
Professor of Law
Boalt Hall
University of California
Berkeley, California

KANTER, DEBORAH
District Office Chief
South District
Los Angeles County Clerk's Office

MILLS, BILLY G.
Judge of the Superior Court
Los Angeles, California

MORRIS, SANDRA JOAN
Attorney at Law
San Diego, California

O'NEILL, ELIZABETH M.
Supervising Conciliation Counselor
Alameda County Conciliation Court

WALLERSTEIN, JUDITH S., M.S.W.
Principal Coinvestigator
Children of Divorce Project
Marin County Community Mental Health Services

STUDY GROUP ON DOMESTIC VIOLENCE

CLINCH, Nanci G.
Attorney at Law
San Diego, California

PORTMAN, MARK
Attorney at Law
San Jose, California

YATES-CARTER, LYNNE (Contributor)
Attorney at Law
San Jose, California

STAFF MEMBERS

Counsel

STEVEN P. BELZER

Secretary

MONICA BURNETT

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SUMMARY OF RECOMMENDATIONS

The major recommendations of the Advisory Commission can be summarized as follows:

1. Section 4359 of the Civil Code should be amended to specify language of authorized restraining orders, to authorize orders for child visitation and possession of property, to authorize the court to issue orders necessary to prevent violence, to authorize the court to incorporate protective orders in interlocutory and final judgments of dissolution of marriage, legal separation and nullity, to provide for transmission of orders to law enforcement agencies, and to provide misdemeanor penalties for willful violation of orders.

2. A Domestic Violence Prevention Act should be enacted which would provide protective orders for a broad class of victims, provide for comprehensive relief to victims in protective orders, make protective orders effective for 90 days and make them renewable, provide for transmission of orders to law enforcement agencies, authorize the court to appoint attorneys and fix attorney fees, and provide misdemeanor penalties for willful violation of protective orders.

3. Law Enforcement Practices and Criminal Procedures should be codified to set forth the duties of peace officers responding to domestic violence calls including advising victims of available remedies and resources and assisting them to obtain

medical assistance, notifying an offender of orders, and arresting an offender or assisting victims in effecting citizens' arrests. Peace officers should be granted immunity for the good faith performance of their duties. Restraining orders or protective orders should be authorized as conditions of release of arrested offenders and should be transmitted to law enforcement agencies.

4. A Domestic Violence Program should be instituted in each Conciliation Court authorizing the court to issue protective orders effective for 90 days, to order parties into counseling, to provide for transmission of orders to law enforcement agencies and to provide misdemeanor penalties for willful violation of orders.

5. A Family Offense Program should be codified if a Statewide Family Court System is adopted, as an alternative to prosecution in criminal courts.

6. A diversion program for domestic violence offenses similar to that for drug offenders under Penal Code Section 1000 should be enacted.

7. The forms prescribed by the Judicial Council of California should be modified for use under Code of Civil Procedure Section 527(b) and new forms should be drafted for use under the proposed Domestic Violence Prevention Act.

8. The court should be given authority to appoint attorneys to represent minor children in cases where domestic violence is an issue. Such attorneys would have an advocacy role regarding the child and would make recommendations to be considered by the court in making decisions having direct effect on the child.

9. A statewide toll-free Domestic Violence Hotline should be funded to provide information and assistance to victims and to gather and make public data about the frequency and nature of calls.

10. A Governor's Commission on Domestic Violence should be created to establish and monitor programs for statewide coordination, gathering and dissemination of data and to provide technical assistance to domestic violence programs, and to perform other related functions.

11. More and better educational programs on domestic violence should be offered in law enforcement training, in law schools and through the Center for Judicial Education and Research.

INTRODUCTION

Domestic violence has recently been recognized throughout the State of California as a critical problem of great social consequence. In April of 1978, the Attorney General of California held two statewide conferences on the issue of domestic violence and the ability of law enforcement to meet this problem.

Recently the California legislature declared that:

"There are hundreds of thousands of persons in this state who are regularly beaten. In many such cases, the acts of domestic violence lead to death of one of the involved parties. Victims of domestic violence come from all socioeconomic classes and ethnic groups, though it is the poor who suffer most from marital violence, since they have no immediate access to private counseling and shelter for themselves and their children. Children, even when they are not physically assaulted, very often suffer deep and lasting emotional effects, and it is most often the children of those parents who commit domestic violence that continue the cycle and abuse their spouses." 1/

For victims of domestic violence, the vast majority of whom are women, as well as an increasing number who are children or elderly, the problem is often one of life or death. Domestic homicide, the murder of one family member by another, accounts for one-quarter to one-third of all homicides, 2/ and women, far more often than men, are the victims. In California during 1971, 8.7 percent of male homicide victims were murdered by their wives, while 32.8 percent of female homicide victims were murdered by their husbands. 3/ The correlation between wife-beating and wife-murder has been established in a study conducted by the Kansas City police. In 85 percent of family homicides and aggravated assaults, police had been called in at least once in the two years prior to

the act causing death or aggravated assault, and in 50 percent of those cases police had been summoned five or more times in the two year period before the reported murder or assault occurred.^{4/} According to the FBI, in 1973 one-fourth of all murders throughout the nation occurred within the family and one-half of these were husband-wife killings.^{5/}

The disturbing conclusion reached by this Study Group is that historically the civil and criminal laws and the mechanisms for enforcement of those laws have been ineffective in preventing the recurrence of domestic violence.

Traditionally many of our laws, as well as the common laws of England, have given sanction to a wife beater's acts. As Sir William Blackstone, a noted English legal scholar, commented:

"The husband also, by the old law, might give his wife moderate correction. For, as he is to answer for her misbehavior, the law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children, for whom the master or parent is also liable in some cases to answer."^{6/}

Even today there continues to be a reluctance among law enforcement agencies, prosecuting agencies, the private bar, social service agencies, the judiciary and the legislature in accepting the premise that violent behavior towards another person in a domestic situation is not acceptable behavior.

The feminist movement has drawn attention to the issue of domestic violence, and the magnitude and seriousness of domestic violence is now recognized as a serious social problem. Concerted efforts of the feminists and the media to educate the general

public and governmental agencies about domestic violence are changing attitudes so that violence in the home is no longer considered as acceptable behavior: the public is moving closer to a stance that domestic violence is wrong and should not be tolerated.

The change in attitudes regarding domestic violence is reflected in recent legislation making it a little easier for victims to leave the battering situations.

Several states, including California, have recently passed legislation providing funding for shelter services for battered women. A network of shelters is developing on an international level. ^{7/}

California's legislature, long considered one of the most innovative and progressive in the United States, has enacted legislation **enabling victims of domestic violence to obtain** restraining orders for up to thirty days, whether or not other ^{8/} legal action has been filed and regardless of marital status.

Litigation on these issues has changed law enforcement policies in many communities. Law suits have been filed against New York City and Oakland police departments demanding enforcement of valid restraining orders previously not enforced as a matter of policy. ^{9/}

Many states have enacted legislation addressing a variety of domestic violence issues, and many others are in the process of passing similar legislation. ^{10/}

This report and its recommendations are offered as a starting point from which California's legislative and executive branches might develop a comprehensive scheme of legislative reform which would offer victims of domestic violence viable legal alternatives to their problems and, for the first time, establish a clear state policy that, in all areas of the law, discrimination against victims of domestic violence in the substance and enforcement of the law will not be tolerated.

The Study Group on Domestic Violence has attempted to limit its study and recommendations to areas of the law directly or indirectly related to the Family Law Act ^{11/} or its enforcement. We discovered the issue of domestic violence and the need for legislative revision to deal with the problem extends far beyond the provisions of the Family Law Act, and cannot be separated from other areas of the law.

Many of our recommendations have been drawn from existing statutes and proposed legislation from throughout the United States and Great Britain, as well as from our own personal experience as attorneys representing victims of domestic violence.

The recommendations made in this report are based upon the following principles:

1. that in order to be effective, all laws pertaining to the prevention of domestic violence should be fully enforced by law enforcement officers regardless of the relationship of the parties;
2. that all victims of domestic violence should have the

courts available to offer legal protection and adjudication of their causes, and that the cost of filing for protective relief should never preclude a person from obtaining the relief sought;

3. that the alternatives and consequences of requesting assistance from either the Family, Criminal or Conciliation Courts should be clearly defined and that the remedies available through each court be effective, according to its purposes;
4. that a victim of domestic violence is entitled to be fully informed of his or her rights and all legal remedies available to him or her by law enforcement officers whom he or she may call for assistance;
5. that the state government has a responsibility to the citizens of California to increase public awareness of the problem of domestic violence and support programs designed to prevent and remedy domestic violence.

The establishment of shelters for victims of domestic violence has been a temporary, short-term measure of helping to prevent the repeated occurrences of violence in domestic situations. These shelters are sought out by victimized persons, many of whom are reluctant to call the police or who do not want their abusers arrested or prosecuted, whether from fear or some other motive. This is not a panacea, as pointed out by Erin Pizzey, founder of the first shelters for battered women in Great Britain:

"a center in every city in every country would help...but it's like putting a band-aid on a cancer. What's really needed is legal and societal recognition of the problem." 12/

If women were truly liberated, wife abuse could be minimized by having them simply walk away; but it is unlikely that a woman can walk away from abuse by an entire society, whether it be the result of economic, social or legal discrimination. It is unlikely that while the laws proclaim women to be unequal, the women will be able to convince themselves that it is not so. Until our society sees fit to grant true equality to women inside and outside of marriage, the epidemic of domestic violence will continue.

The Study Group on Domestic Violence offers this report to further the legal and societal recognition of the problem of domestic violence in the State of California.

I. DEFINITIONS

The following definitions apply to those terms as they are used throughout this report. ^{13/}

DOMESTIC VIOLENCE is "abuse" perpetrated on a family or household member(s).

ABUSE means the occurrence of one (1) or more of the following acts:

- a) Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury;
- b) Placing another person in reasonable apprehension of imminent serious bodily injury;
- c) Engaging in conduct which creates a substantial danger of physical injury to another person.

FAMILY AND HOUSEHOLD MEMBERS means spouses, persons co-habiting, persons who were formerly spouses or co-habitants, parents or children, or other persons related by consanguinity or affinity to the second degree.

HARASSMENT means knowing and willful course of conduct directed at a specific person which seriously alarms, annoys or harasses such person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner or complainant.

COURSE OF CONDUCT is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

II. PROTECTIVE ORDERS

EXISTING LAWS APPLICABLE TO DOMESTIC VIOLENCE:

California codes provide several legal alternatives theoretically available to a battered person.

The Family Law Act provides protective orders for persons who file a legal action for dissolution, legal separation or nullity of marriage (See Civil Code Section 4359, as fully set forth in Appendix A).

The Code of Civil Procedure provides actions for injunctive relief for the prevention of irreparable harm to the petitioning party (See Code of Civil Procedure Section 527(a), as fully set forth in Appendix A). A recent amendment to the Code of Civil Procedure provides protective orders for victims of domestic violence regardless of whether the parties are married or have filed other legal action (See Code of Civil Procedure Section 527(b), as fully set forth in Appendix A). A new law, effective January 1, 1979, provides for protective orders in cases of harassment (See Code of Civil Procedure Section 527.6, as fully set forth in Appendix A).

The Penal Code provides criminal sanction for violation of court orders (See Penal Code Section 166.4, as fully set forth in Appendix B). The Penal Code also has more than twenty separate code sections defining crimes which can occur during an incident of domestic violence (See Appendix B).

In spite of all of the laws mentioned above, violence often occurs in open defiance of the aforementioned court orders and criminal laws without civil or criminal punitive action taken against the law breaker.

WHY EXISTING LAWS ARE INEFFECTIVE IN DEALING WITH DOMESTIC VIOLENCE:

All of the laws which currently provide for protective orders and their enforcement were either written or have been interpreted and applied in several different ways, which has resulted in a lack of uniformity and integration among them. The types of orders which may be issued under the various code sections are limited or unspecified. None of the existing statutes include specific authority enabling the courts to grant orders pertaining to other issues which may need to be decided or to other individuals in need of the court's protection in order to provide comprehensive relief.

Most victims of domestic violence seem to have little, if any, knowledge of the availability of protective orders or the various legal methods of enforcing their rights.

Enforcement of protective orders has been generally non-existent. This non-enforcement policy is a result of the failure of existing statutes to provide the necessary mandate for law enforcement officers to insure compliance with valid court orders or quick protective action when violations occur.

Given the many problems that interfere with the execution and enforcement of protective orders, it is not surprising that a widely held attitude among attorneys, law enforcement officers and batterers is protective orders are not worth the paper they are printed on.

SPECIFIC STATUTES: ASSESSMENT OF SHORTCOMINGS:

A. Family Law Act Protective Orders:

Civil Code Section 4359 provides authority for the court to issue restraining orders pending trial in a suit for dissolution, legal separation or nullity of marriage (See Appendix A).

The several orders authorized by this statute empower the court: to prevent disposition of property by either party pending trial; to prevent any party from molesting or disturbing the peace of the other party and the minor children; to order either party to vacate a family dwelling; or to award temporary custody of the minor children of the parties.

The orders authorized by this code section have not proven effective in providing protection to victims of domestic violence: they are limited to the few mentioned in the statute, and the statute does not provide specific authority enabling the court to issue other orders which could assist in resolving important issues between the parties.

The wording of the restraining orders authorized by this statute are vague and non-specific. Batterers often fail to understand the meaning of the orders, hence unknowingly violate the orders. Law enforcement officials complain that the language "molesting or disturbing the peace" is too vague and causes difficulty in determining whether a violation has occurred.

This ambiguity not only results in a lack of protection for the victim, but further results in the victim's inability to enforce the orders. Many prosecuting agencies refuse to issue

complaints for violations of these orders because, among other reasons, they may have difficulty in proving the batterer's conduct was in willful violation of the court's vague language.

The existing restraining orders have not been effective in protecting the many women who have been sexually assaulted by their estranged husbands. Law enforcement officers, prosecuting agencies and courts often ignore complaints in these cases, reasoning that any such charge would be hard to prove.

Other important issues which could be resolved by pre-trial orders in cases of domestic violence, but usually are not, are the following: the use and control of personal property such as automobiles; the payment of encumbrances and debts; and clear guidelines regarding visitation of the minor children when a temporary custody order has been issued. Currently, there are no provisions in Civil Code Section 4359 for the above orders and, as a result, arguments have often developed between the parties over these issues, many times resulting in further violence.

Civil Code Section 4359 should be revised with the intent of accomplishing the following objectives:

- 1) elaborating with specificity the language of restraining orders which may be issued under this section;
- 2) resolving issues of visitation and possession of property pending trial in order to avoid unnecessary contact between the parties over these issues; and
- 3) enabling the court to issue any relevant orders deemed necessary to prevent violence.

The Family Law Act does not provide express authority for the court to issue protective orders in either Interlocutory or Final Judgments, although some courts have issued such orders pursuant to the authority of Code of Civil Procedure Section 187 (See Appendix A).

There is also no statutory authority for the transmittal of Civil Code Section 4359 or other Family Court restraining orders to law enforcement agencies for filing as is authorized by Code of Civil Procedure Section 527(b) for restraining orders issued pursuant to that section. Law enforcement officers have steadfastly refused to enforce restraining orders other than 527(b) restraining orders, arguing they have no verification of their present validity. There is no statutory directive that violation of other court orders shall be a misdemeanor.

B. Code of Civil Procedure Section 527(b):

The recently enacted Code of Civil Procedure Section 527(b) has been an innovative attempt to improve the effectiveness and availability of restraining orders in cases of domestic violence.

Traditionally, if a victim of domestic violence obtained a court order restraining the other person from battering him or her and requested law enforcement officers to help enforce the order, common excuses offered for non-enforcement have been: "the problem is non-criminal in nature, call your attorney" or "there is no effective way to determine whether the restraining orders are valid or not". Code of Civil Procedure Section 527(b)

represents a major legislative effort to surmount these excuses and to enable the victim to obtain assistance in enforcing valid restraining orders.

527(b) restraining orders have been unobtainable in many cases. Attorney's fees and the cost of filing have priced the obtaining of such an order anywhere from \$200-\$400, unless the victim is able to qualify for free legal services and waiver of the filing fee.

The statute does not specifically authorize recovery of attorney's fees and costs. If such a provision were included, more attorneys might agree, for little or no retainer, to assist the victim in obtaining restraining orders.

Many domestic violence victims cannot afford the price of obtaining such an order which offers protection for up to 30 days. Because punishment for violation of a valid court order requires the responding party first be served with a copy of the restraining orders, in some cases the 30 day period may end before the individual can be served with such orders.

Another shortcoming of this statute is its failure to clearly specify the types of orders which may be obtained. As a result, there has been much confusion among the courts and the bar over the extent of the court's authority to grant orders pursuant to this statute.

ATTITUDES AND BEHAVIOR WITHIN THE LEGAL SYSTEM:

Judges and Attorneys:

Attitudes concerning the issuance of restraining orders vary from judge to judge. Some judges, who tend to strictly construe the protective order statutes, will only grant requests for orders which have been worded in the exact language of Civil Code Section 4359; that is, enjoining a party from "molesting or disturbing the peace of another party...." Other judges are more flexible in granting restraining orders designed to specifically enjoin certain behavior applicable to the circumstance in each particular case.

Attorneys also vary in attitude and opinion concerning the proper drafting of restraining orders. Code of Civil Procedure Section 527(b), by not specifying what is the preferred language of the restraining orders and what types of orders or pleadings should be presented to the court, has confused many attorneys.

As a result of varying personal opinions among the bench and bar, and without clarification from the legislature, the policy and practice with regard to restraining orders may vary substantially from one jurisdiction to another.

Some courts have issued elaborately detailed restraining orders protecting the petitioning party from physical harm as well as issuing orders pertaining to other conflicts, such as the use of personal property, while other courts have been reluctant to grant a restraining order using the specific statutory language of Civil Code Section 4359.

The courts should be made aware of their duty to make the use of the powers of the court available for the protection and benefit of victims of domestic violence.

Law Enforcement Officers:

The current approach taken by many law enforcement officers is avoidance of any responsibility for enforcement of valid protective orders.

In responding to domestic disturbance calls, law enforcement officers will often suggest that the victim consult an attorney to obtain a restraining order. Although the victim may demand his or her right to be protected and that the batterer be arrested, many law enforcement officers respond from an altogether different perspective, their interest focused on keeping the peace, settling the parties differences and avoiding arrest. ^{14/}

As a result of this approach, the batterer correctly perceives the authorities will do very little, if anything, to stop the abusive behavior and the victim perceives he or she must seek protection elsewhere.

After a victim has successfully obtained restraining orders, the same officers who suggested obtaining the orders usually turn around and inform the victim he or she must contact his or her attorney if the batterer violates the orders. These same officers often inform the victim that the restraining orders are "civil" in nature, and therefore not within their authority to enforce. This policy is erroneous in that violations of valid court orders are criminal in nature (See Appendix B). However, the victims usually

have no knowledge that such violations are misdemeanors, and the officers have no duty to so inform them.

The "restraining order runaround", as it is commonly referred to, has done more to reduce the effectiveness of protective orders than any other problems mentioned hereinabove. Innumerable battered women have completely lost faith in the legal system's ability to prevent further harm to themselves and their children after experiencing the frustration and despair of unresponsive law enforcement officers who subtly condone the batterer's behavior.

Not all officers, however, are insensitive to the issues presented in this discussion. Just as attitudes vary among individual judges and attorneys, law enforcement officers possess extremely divergent attitudes and, similar to the courts, the availability of police protection from one jurisdiction or one district to the next will often vary greatly depending upon the individual officer's views. It is this unequal interpretation of the protective order statutes among the various jurisdictions which this report addresses and attempts to remedy.

THE PROPOSED SOLUTIONS:

A. Recommended Legislative Revision of Civil Code Section 4359:

The Study Group on Domestic Violence has rewritten the restraining orders which may be issued under this code section.

The new language more specifically sets forth the behavior which may be prohibited, with the intention of clearly informing

the batterer, and law enforcement officials, of the behavior prohibited by the order.

This Study Group recommends modification of the statutory authority to issue orders to vacate the family dwelling, as provided in Section 1(c) of the proposed revision of Civil Code Section 4359, to further clarify the court's authority to issue such orders pending a hearing on the matter, and regardless of ownership or other possessory interests in the property by either party. It is recommended that the standard for issuance of the order to vacate be expanded to include circumstances where one party assaults or threatens to assault the other party.

The Study Group further recommends that Section 4359 specifically authorize orders which clarify the use and control of property and the granting or denial of visitation with the minor children pending a hearing on these matters before the court (See Sections 1(d) and 1(e) of the recommended legislative revision of Civil Code Section 4359, infra).

The Study Group further recommends the courts be empowered to make any further orders determined by the court as necessary to prevent violence against a party, the party's family or other household members (See Section 1(f) of the recommended legislative revision of Civil Code Section 4359, infra).

It is virtually impossible for a statute to anticipate every circumstance or need of the persons whom it may be intended to protect. Therefore, the courts must be entrusted with authority to issue necessary orders suited to individual circumstances, with adequate assurances that both sides of the dispute will have an

opportunity to be heard before the court.

The Study Group recommends that legislation be adopted to establish the court's authority to issue restraining orders as part of an interlocutory decree of dissolution of marriage, or final orders of legal separation or nullity of marriage. These orders would be of a specified duration not to exceed one year and would be worded in the same manner as other such orders authorized elsewhere in the codes. (See Section 2 of the recommended legislative revision of Civil Code Section 4359, infra).

It is also recommended that those orders issued pursuant to Civil Code Section 4359 and for the prevention of domestic violence (See Sections 1(b), 1(c) and 1(f) of the recommended legislative revision of Civil Code Section 4359) be transmitted to appropriate law enforcement agencies to be kept on file for reference by law enforcement officers responding to a scene of domestic violence. This recommendation has been supported in principle by the California State Bar Association ^{15/}.

B. Proposed Domestic Violence Prevention Act:

This proposed act is intended to supercede Code of Civil Procedure Section 527(b) and to provide more protective orders to a broader class of victims of domestic violence. The proposed act specifically sets forth the orders which may be issued by the court. These orders will enable the court to provide greater relief to victims in more areas of need.

The Study Group recommends the duration of the orders be extended from 30 days, as is provided in Code of Civil Procedure Section 527(b), to 90 days with the court retaining authority to make further renewals of such orders. It is also recommended the filing fee for protective relief be reduced, with allowance for fee waivers. The proposed act further provides for the filing of the court's orders with appropriate local law enforcement agencies and requires those agencies to maintain the orders on file, as is currently provided in Code of Civil Procedure Section 527(b) (however, 527(b) does not mandate law enforcement agencies to maintain such files).

The rights of a petitioner to request relief in propria persona (representing oneself before the court) is also recognized by the Study Group throughout this report. However, in order to enable adequate enforcement of restraining orders by contempt, we further recommend the court be authorized, in its discretion, to appoint attorneys to represent victims of domestic violence in pursuing contempt actions against the batterer for violations of valid restraining orders.

A. RECOMMENDED LEGISLATIVE REVISION OF
CIVIL CODE SECTION 4359

1. During the pendency of any proceeding under Title 2 (commencing with Section 4400) or Title 3 (commencing with Section 4500) of this part, upon application of either party in the manner provided by Section 527(a) of the Code of Civil Procedure, the Superior Court may issue orders as follows:

- a) For the restraint of any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if such order is directed against a party, requiring him or her to notify the other party of any proposed extraordinary expenditures;
- b) For the restraint of any party from in any manner molesting, harassing, attacking, striking, threatening, sexually assaulting, battering or disturbing the peace of the other party or any person under the care, custody or control of the other party, and, in the discretion of the court and upon a showing of good cause, other specifically named family and household members;
- c) The court may require one party to move out of the home for such period of time and under such conditions

as the court determines, whether the home is rented, owned or being purchased by one party or both parties, if that party assaults or threatens to assault the other or if it can be shown that physical or emotional harm would otherwise result to the petitioning party or any person under the care, custody and control of such party;

- d) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of installment liens and encumbrances thereon;
- e) For the determination of the temporary custody of any minor children of the marriage and to establish temporary visitation rights or to deny visitation rights as determined by the court to be in the best interests of the children;
- f) Any further orders determined by the court as necessary to prevent violence against any party, family or household member.

2. To prevent the recurrence of domestic violence, the court may make those orders provided in Subsections 1(b) or 1(f) of this section as part of a judgment granting a dissolution of marriage, legal separation or nullity of marriage. The duration of said orders may not exceed one year from the date of entry of

the judgment and the date of expiration shall be stated in the order. Said orders may be renewed yearly upon a motion by either party.

3. Upon issuance of any order under Subsections (b), (c) or (f) of this Section for the prevention of domestic violence against any party, family or household member, the court shall, upon request of a party, order a copy of the orders be transmitted to such law enforcement agencies as are requested by the party. Said order shall instruct either the clerk, requesting party or attorney for the requesting party to transmit the court's orders by the close of the business day on which such orders were granted. The clerk, requesting party or attorney for the requesting party shall also transmit any subsequently filed renewal, modification, termination or proof of service of any of the aforementioned orders. A party may request transmittal of orders to law enforcement agencies having jurisdiction over ^{16/} locations where domestic violence may occur.

4. Law enforcement agencies shall establish procedures to insure that any peace officer in the state of California who is present at the scene of an alleged violation of restraining orders may be informed of the existence and terms of such orders by the agency maintaining those orders on file.

5. Willful violations of orders issued pursuant to Subsections (b), (c) and (f) of this Section shall be a misdemeanor.

B. PROPOSED DOMESTIC VIOLENCE PREVENTION ACT

That there be created an act providing for comprehensive treatment of procedures pertaining to the issuance, filing and enforcement of protective orders, which act shall supercede Code of Civil Procedure Section 527(b) and shall include the following provisions: ^{17/}

1. That a spouse, parent, child, elderly person, any member of a family or any unrelated member of a household may petition for relief; and that any parent or adult household member may petition on behalf of minor children by filing a petition with the court alleging abuse by the respondent.

2. A person's right to petition for relief is not affected by his or her leaving the household to avoid abuse or harassment.

3. Upon filing a petition, the party may obtain temporary restraining orders in accordance with Code of Civil Procedure Section 527(a), upon affidavit which, to the satisfaction of the court shows reasonable proof of abuse or harassment of petitioner by respondent and that great or irreparable harm would result to petitioner if the order is not granted.

4. The respondent may file a response which explains, excuses or denies alleged abuse or harassment or to request relief from the court. If the court finds that unlawful abuse or harassment exists, an injunction shall issue prohibiting such abuse or harassment by any party and/or any agent on behalf

of the party.

5. The court shall have the power to grant temporary orders, ex parte, to bring about a cessation of abuse or harassment of petitioner including but not limited to the following:

- a) For the restraint of any party from in any manner molesting, harassing, attacking, striking, threatening, sexually assaulting, battering or disturbing the peace of the other party or any person under the care, custody or control of the other party and, in the discretion of the court and upon a showing of good cause, other specifically named family and household members;
- b) The court may require one party move out of the home for such period of time and under such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties if that party assaults or threatens to assault the other or if it can be shown that physical or emotional harm would otherwise result to the petitioning party or any person under the care, custody and control of such party;
- c) For the award of temporary custody of any minor children of the parties and to establish

visitation rights or to deny visitation rights as determined by the court to be in the best interests of the children;

- d) Any further orders determined by the court as necessary to prevent violence against any party, family or household member.

When an ex parte order to vacate has been issued the court may upon its own motion shorten time for hearing.

6. At a noticed hearing the court shall have the power to grant restraining orders, injunctions, or approve any consent agreement to bring about a cessation of abuse or harassment of petitioner including, but not limited to, the following:

- a) For the restraint of any party from in any manner molesting, harassing, attacking, striking, threatening, sexually assaulting, battering, or disturbing the peace of the other party or any person under the care, custody or control of the other party and, in the discretion of the court and upon a showing of good cause, other specifically named family and household members;
- b) The court may require one party to move out of the home for such period of time and under

such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties if that party assaults or threatens to assault the other or if it can be shown that physical or emotional harm would otherwise result to the petitioning party or any person under the care, custody and control of such party;

- c) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of installment liens and encumbrances thereon;
- d) For the award of temporary custody of any minor children of the parties and to establish visitation rights or to deny visitation rights as determined by the court to be in the best interests of the children;
- e) Where there exists a presumption of paternity under Civil Code Section 7004, the court may also award temporary support for the children of the parties;
- f) When the respondent has a legal obligation to support a petitioner, the court may award temporary support to said petitioner;

- g) The court may order the respondent to pay to the person abused monetary compensation for losses suffered as a direct result of the abuse. Compensatory losses shall include, but are not limited to, loss of earnings or support, out-of-pocket losses for physical injuries, property damage, and moving expenses sustained by the petitioner;
- h) The court may order either party to undergo medical or psychiatric treatment;
- i) The court may award attorneys fees and costs to the prevailing party;
- j) Any further orders determined by the court as necessary to prevent violence against any party, family or household member.

7. Restraining orders granted pursuant to this Act shall remain in effect, in the discretion of the court, not to exceed 90 days; or unless the parties mutually consent to continue the orders in effect for a period not to exceed one year. The court may order a rehearing at any time prior to the end of the 90 day period to determine whether the restraining orders should be modified, continued for another 90 days, or terminated. A report of a psychiatrist, psychologist, counselor or their testimony may be introduced for or against either party at this time.

8. The court having jurisdiction of this Act shall provide for issuance of these orders on a 24 hour basis 7 days a week.

9. The court may amend its order or the consent agreement at any time prior to the expiration of the orders.

10. The court shall not require an undertaking or bond for the filing of a petition under this Act.

11. The filing fee shall not exceed \$25.00. The court, in its discretion, may provide a waiver of filing fee and order respondent pay to the court clerk costs incurred by petitioner in bringing this action.

12. Any proceeding under this Act shall be in addition to any other available civil or criminal remedies.

Any order issued pursuant to the Family Law Act pertaining to any matter covered by any court order issued pursuant to this Act shall render that portion of the court order pursuant to this Act null and void to the extent that any conflict exists between the terms of the respective orders.

13. No order or agreement made under this Act shall in any manner affect title to real property.

14. Nothing in this Act shall preclude either party from representation by private counsel or from appearing in his or her own behalf.

15. If requested by the court, probation officers, welfare

agents or Conciliation Court counselors shall assist and make investigations, reports and recommendations regarding child custody and visitation pursuant to this Act.

16. Upon issuance of any order under this Act, the court shall, upon request of a party, order a copy of the orders be transmitted to such law enforcement agencies as are requested by the party. Said order shall instruct either the clerk, requesting party or attorney for the requesting party to transmit the court's orders by the close of the business day on which such orders were granted. The clerk, requesting party or attorney for the requesting party, shall also transmit any subsequently filed renewal, modification, termination or proof of service of any of the aforementioned orders. A party may request transmittal of the aforementioned orders to law enforcement agencies having jurisdiction over locations where domestic violence may occur.

17. The petitioner shall be entitled to one free certified copy of the orders and proof of service for his or her records.

18. Law enforcement agencies shall establish procedures to insure that any peace officer in the State of California who is present at the scene of an alleged violation of restraining orders may be informed of the existence and terms of such orders by the agency maintaining those orders on file.

19. Willful violations of these orders shall be a misdemeanor.

20. Any orders issued pursuant to this Act shall include the following statement:

"These orders shall be enforced by all peace officers in the State of California."

21. The court shall prescribe the amount of bail to be set if a party is arrested for violation of restraining orders issued pursuant to this Act.

22. The court may, in its discretion and upon a showing of good cause, appoint attorneys to represent the parties in a contempt action for violation of court orders pursuant to this Act.

III. PROPOSED LAW ENFORCEMENT PRACTICES AND CRIMINAL PROCEDURE LEGISLATION

Among the most serious problems preventing effective protection for victims of domestic violence is a failure of law enforcement officers, in many cases, to provide information and assistance to the victim which would enable him or her to secure the enforcement of their rights against the abuser. Police discretion in dealing with domestic violence cases is virtually absolute, without restriction or guidance from the legislature.

This Study Group recognizes law enforcement officers should continue to have discretion in determining what course of action to follow in cases of domestic violence, in that each case involves its own set of facts and individuals, and each case requires a response best suited for the particular situation. However, without basic guidelines established for peace officers to apply in responding to domestic violence cases, there will continue to be an abuse of discretion by some officers, resulting in a lack of protection for victims.

The recommendations of this Study Group are primarily designed to encourage a limitation of discretion of law enforcement officials and, when the facts warrant, the arrest, prosecution and conviction of batterers. Although criminal punishment is certainly not an ideal remedy, this approach is considered by the Study Group to be necessary, given the proper circumstances, because of the serious lack of protection in the present system for victims and because of the seriousness of the physical and mental abuse the victims are presently suffering.

We recognize the school of thought which argues an increase in arrests and prosecutions is not a proper remedy for eliminating domestic violence or any of society's other ills. Some legal scholars have taken the position that "arrests" have historically been used as a tool for discrimination against minorities and unpopular groups, and their struggle against discrimination has often taken the form of a struggle against these oppressive arrest policies. However, we want it clearly understood our recommendations in no way advocate the unequal enforcement of the laws by means of arrest policies and procedure. But, in the area of family violence, by application if not by intention, the criminal justice system is effectively utilizing the flip-side of arrest, that is, the refusal to arrest or prosecute batterers, as a tool for discrimination against victims. In order to remedy this resulting discrimination against victims, the Study Group believes an effectuation of arrests and prosecutions of abusers is called for.

It should be noted that domestic violence is not a problem particular to minorities or the poor,^{18/} and any resulting increase in the arrest and prosecution of batterers would not, if equally applied in all situations, have an adverse impact against any particular racial, ethnic, or socio-economic group. Even civil libertarians, who have traditionally opposed the use of arrest and prosecution in domestic violence cases, are beginning to understand that "arrest" is not the issue. The real issue is one of equal protection for all persons and the right established in Yick Wo v. Hopkins^{19/} to the nondiscriminatory application of the laws.

Another somewhat controversial aspect of the Study Group's recommendations is that the recommendations tend to limit the discretion traditionally afforded law enforcement officials. However, the problem of unreviewable discretion is a recognized issue which transcends the field of domestic violence. According to Kenneth Culp Davis, perhaps the foremost expert on administrative law,

"The vast quantities of unnecessary discretionary power that have grown up in our system should be cut back, and the discretionary power that is found to be necessary should be properly confined, structured and checked." 20/

This Study Group agrees with Davis, particularly in the area of law enforcement response to domestic violence. Therefore, our recommendations necessarily include the establishment of responsibilities of law enforcement officers in responding to domestic violence cases to insure the officers: inform the victims of their rights and the procedures available to assist them; provide needed assistance to the parties; and enforce all laws and valid court orders.

It is also our recommendation that post-arrest release procedures be revised in order to assure adequate protection for the victim by the issuance of protective orders and/or conditions of release.

RECOMMENDATIONS:

1. RESPONSIBILITIES OF PEACE OFFICERS RESPONDING TO DOMESTIC VIOLENCE:

A) Whenever a law enforcement officer believes that a

spouse, parent, child, any member of a family or household has been physically abused, the officer shall use all reasonable means to prevent further physical abuse including: ^{21/}

- i) remaining at the scene temporarily in order to terminate or prevent the commission of any crime or the violation of any court order;
- ii) assisting a victim of abuse in obtaining medical assistance if requested or if such person is apparently in need of medical assistance;
- iii) giving a victim of abuse notice of the following:
 - a) that he or she may file a petition for temporary restraining orders to prevent further violence;
 - b) that he or she has the right to make a citizen's arrest (pursuant to Penal Code Section 837) and the manner by which such arrest may be effected (pursuant to proposed Revision of Penal Code Section 841) and any further information regarding procedures the victim should pursue in order to initiate criminal prosecution. (Whenever possible, this information should be given out of the presence of the suspect);
 - c) that he or she may request the officer to remain at the scene or assist in obtaining medical assistance as provided in Sub-

sections (i) and (ii) of this section;

- iv) informing all persons present who were involved in an occurrence of domestic violence of the appropriate local resources available to such persons, including but not limited to emergency housing, and counseling services;
- v) making a thorough investigation of the reported abuse, including the discovery and investigation of all evidence of possible crimes, the taking of pictures of the injuries, and the filing of a report of the incident including a detailed description of the injuries sustained by the victim, and the names, addresses and telephone numbers of all witnesses.

B) When a person calls for law enforcement assistance to have a suspect removed from the premises and can show that he or she is in lawful possession of the premises by showing a lease, grant deed, rent receipts or other documents, and all other elements of a trespass exist within the meaning of Penal Code Section 602.5, the responding officer shall: ^{22/}

- i) Request the suspect to leave the premises forthwith and render a civil standby for the suspect to remove his or her belongings;
- ii) Should the suspect refuse to leave upon request and grounds exist for an officer to arrest for unauthorized entry, the suspect shall be arrested and may be cited and released.

2. NOTICE OF ORDERS BY LAW ENFORCEMENT OFFICERS:

In responding to a call for assistance, a law enforcement officer who is informed of the existence and terms of any restraining orders on file with a law enforcement agency and who makes contact with the person named respondent in said orders, shall give notice of said order, if available to the officer, on the person named respondent therein. If no copy is available, the terms of the order may be transmitted orally to the respondent. In either case, the law enforcement officer shall file a report of said notice with the records division of the law enforcement agency maintaining said orders on file.^{23/}

3. SUFFICIENCY OF NOTICE OF ORDERS TO RESPONDENT:

If the respondent in an action pursuant to the Family Law Act, the proposed Conciliation Court Domestic Violence Program, Code of Civil Procedure Section 527(b) or the proposed Domestic Violence Prevention Act has not been served personally with temporary restraining orders or injunctive orders but has received notice of the existence and substance of said orders from any person, including a law enforcement officer, any act by respondent in violation of said order may be deemed sufficient to subject respondent named in said orders to civil or criminal penalties.^{24/}

4. CITIZEN'S ARREST (PROPOSED REVISION OF PENAL CODE
SECTION 841):

The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest and the authority to make it, except when the person making the arrest is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape.

The person may make a citizen's arrest during or immediately following the offending incident. If the person making the citizen's arrest is unable to immediately effect said arrest, either because of the escape of the person to be arrested or because the person making the arrest sustained injuries so severe as to make an arrest unfeasible, said arrest may be made as soon as the whereabouts of the person to be arrested are known or the victim has sufficiently recovered from said injuries.

The person making the arrest must, on request of the person he is arresting, inform such person of the offense for which he is being arrested.

A private person making a citizen's arrest in the presence of a peace officer must inform the officer of his intention to make a citizen's arrest, identify the person to be arrested and the nature of the offense for which the arrest is being made.

Thereafter the peace officer must receive the person being arrested into custody. Failure to receive such person into custody shall be a violation of Penal Code Section 142.^{25/}

5. EXCEPTION TO ARREST BY CITATION:

When physical assault or battery has occurred between family or household members and a law enforcement officer has probable cause to believe a felony has been committed or a misdemeanor has occurred in his or her presence, the officer shall arrest the alleged assailant if the victim requests. Nothing in this section shall preclude the right of any person to make a citizen's arrest. ^{26/}

6. ARREST WITHOUT WARRANT:

A law enforcement officer shall arrest a person without a warrant when she or he has probable cause to believe that: ^{27/}

A) there exists a valid order pursuant to Code of Civil Procedure Section 527(b), Subsections 1(b), 1(c) or 2 of the proposed revision of Civil Code Section 4359, Sections 5(a), 5(b), 6(a) or 6(b) of the proposed Domestic Violence Prevention Act, Section 2(a) of the proposed Concilitation Court Domestic Violence Program, or the section authorizing Criminal Court Restraining Orders;

B) the alleged offender has actual knowledge of the terms of the order, or a copy of proof of service of said orders has been filed with the court; and

C) the alleged offender has willfully violated the terms of the order.

Upon the arrest of such person, the law enforcement officer shall complete an arrest or crime report in which he or she shall include all facts of the occurrence, including a copy of the restraining order and proof of notice.

When a law enforcement officer at the scene of a domestic violence disturbance does not have probable cause to believe that the alleged offender has been notified of the orders, the officer shall give the alleged offender notice of said orders and shall thereafter file proof of notice with the court and the records division of the law enforcement agency maintaining said orders on file.

7. LAW ENFORCEMENT IMMUNITY:

Law enforcement officers shall be granted immunity from civil and/or criminal liability for arrests made in good faith and without malice. ^{28/}

8. CONDITIONAL RELEASE:

When an act of violence has occurred between family or household members and the alleged offender arrested, the court shall not grant pre-trial release as an alternative to bail unless the release includes conditions there be no further contact with the victim for the duration of the release order

if the court is informed the victim is in reasonable fear of his or her safety or well being.

9. CONDITION OF PROBATION:

Counseling shall be mandatory in all cases in which the offender (1) has committed an act or acts of physical violence, and (2) has been found in contempt for violation of a court order, and (3) the victim is the offender's spouse or minor child.

10. FILING OF CRIMINAL COURT RESTRAINING ORDERS

Whenever a defendant in a case involving domestic violence is ordered by the criminal court, as a condition of release on his own recognizance, probation or parole, to restrain and enjoin from:^{29/}

- A) in any manner molesting, harassing, attacking, striking, threatening, sexually assaulting, battering or disturbing the peace of the complaining witness;
- B) going upon or near the complaining witness' residence, place of business or other stated address;
- c) contacting the complaining witness by telephone or any other means;

the criminal court may order the court clerk to transmit a copy of said restraining order, extension, modification, or termination thereof, by the close of the business day on which such order was granted, to the local law enforcement agency with jurisdiction over the locations where domestic violence may occur.

Law enforcement agencies shall establish procedures to insure that any peace officer in the State of California who is present at the scene of an alleged violation of restraining orders may be informed of the existence and terms of such orders by the agency maintaining those orders on file.

Willful violations of these orders shall be a misdemeanor.

IV CONCILIATION COURT DOMESTIC VIOLENCE PROGRAM

Until the Conciliation Court of San Diego County initiated its Domestic Violence Program in August of 1977, there were no legal remedies available to victims of domestic violence who were looking for protection and counseling for the family unit. The victim of domestic violence had the choice of either filing criminal charges against the batterer or requesting protective orders pursuant to a petition for dissolution, legal separation or nullity of marriage.

Commencing January 1, 1978, the victim of domestic violence gained the further option of filing for protective orders pursuant to Code of Civil Procedure Section 527(b). However, restraining orders issued pursuant to Section 527(b), effective for up to thirty days, only offer short-term protection and no counseling.

For various reasons, including love, security, economic dependence, fear of the unknown, or a sincere hope the problems might be resolved with help and counseling, many victims choose not to pursue these courses of action.

The Domestic Violence Program, as offered by the San Diego Conciliation Court, is available to those persons who (1) are married, (2) have children in the family residence whose welfare may be affected by the domestic controversy, and (3) are interested in pursuing counseling for the problem. A person meeting the above criteria can petition Conciliation Court for assistance.

If the petition is accepted by the Domestic Violence Program, the Conciliation Court Judge then has the authority to (1) order

the parties into counseling, with the time, date and place specified on the orders, and (2) order the respondent to restrain and enjoin from annoying, molesting, attacking, striking, battering or harassing the petitioner or other household members. (For a more complete description of the Domestic Violence Program, see Appendix C).

Although the Conciliation Court Domestic Violence Program falls within the statutory authority of the Conciliation Court Laws, such a program is not specifically provided for by statute. It is the Study Group's recommendation the Domestic Violence Program be codified, thereby making such a program available to all Conciliation Courts throughout the state. We further recommend children, elderly persons and other members of the family or household be given the right, as victims, to seek the assistance of the Domestic Violence Program. Quite often the child's parents are either unable or unwilling to seek professional help for their problems or they do not recognize they have problems. In such cases the child or other members of the household are often victims of domestic violence, while not necessarily a recipient of direct physical abuse.

Code of Civil Procedure Section 1769 does not provide for orders to be effective for more than thirty days unless the parties mutually consent to a continuation of such orders. In many cases involving domestic violence, a restraining order of such short duration forces the victim to return to court every thirty days, thereby causing an increased burden on the court system and an increased financial burden on the victim. (See Appendix A).

No provision has been made for enforcement of orders issued pursuant to the Conciliation Court Laws. However, Code of Civil Procedure Section 1747 mandates all Conciliation Court proceedings be private. The Study Group recommends the Conciliation Court judge be given the discretion to order a contempt hearing be public if the violating party so requests, and that the judge have the discretion, for good cause, to appoint attorneys to represent the parties in a contempt action.

The Study Group further recommends protective orders issued pursuant to the Domestic Violence Program be recordable with law enforcement agencies. This recommendation is consistent with our recommendation protective orders issued pursuant to Civil Code Section 4359, the proposed Domestic Violence Prevention Act and protective orders issued by criminal courts also be recordable with law enforcement agencies. One central record keeping system for all protective orders will enable a party to more effectively seek the enforcement of the orders and will provide law enforcement with current information on the validity of such orders.

PROPOSED CONCILIATION COURT DOMESTIC VIOLENCE PROGRAM

That there be created a statute providing for a Domestic Violence Program of the Conciliation Court, which statute shall include the following: ^{30/}

1. That a spouse, a parent, a child, any member of a family or any unrelated member of a household may petition for relief;

2. Upon filing a Petition and upon affidavit which, to the satisfaction of the court, shows reasonable proof of physical or emotional abuse or immediate and present danger of physical abuse to the petitioner or any person under the care, custody and control of the petitioner, for the purpose of preventing a recurrence of domestic violence, the court may, with or without notice, order the following:

- a) restraining and enjoining respondent from molesting, harassing, attacking, striking, threatening, sexually assaulting, battering or disturbing the peace of the other party or any person under the care, custody and control of the other party and, in the discretion of the court and upon a showing of good cause, other specifically named family and household members;
- b) ordering respondent, within 30 days of the granting of temporary restraining orders, to

attend a hearing, or counseling session, and requiring cause to be shown why the order should not be dissolved;

- c) any further orders determined by the court as necessary to prevent violence against any party, family or household members.

3. Restraining orders granted pursuant to this statute shall remain in effect, in the discretion of the court, not to exceed 90 days, or unless the parties mutually consent to a continuation of such time.

4. The court may order a rehearing at any time prior to the end of the 90 day period to determine whether the restraining orders should be modified, continued for another 90 days, or terminated.

5. The court may in its discretion and upon a showing of good cause, order either or both parties to attend counseling for a period not exceeding 90 days.

6. Any willful disobedience of any temporary restraining order granted pursuant to this statute shall be a misdemeanor.

7. Notwithstanding Code of Civil Procedure Section 1747, which provides that all superior court hearings or conferences in proceedings under the Conciliation Court Laws shall be held in private, the court may, in its discretion and in the interest of justice, order the following be made public:

- a) hearings on contempt for violation of any court order pursuant to this statute, if the citee requests;
- b) a copy of the temporary restraining orders, or extension, modification or termination thereof, if the court orders it be filed with the local law enforcement agency with jurisdiction over locations where domestic violence may occur.

8. The court may, in its discretion and upon a showing of good cause, appoint attorneys to represent the parties in a contempt action for violation of court orders pursuant to the proposed Domestic Violence Program. Conciliation Court shall inform the parties of the availability of such representation. Either party may be represented by an attorney or appear in his or her own behalf.

9. The Conciliation Court clerk shall, without fee, assist any person in the preparation and presentation of any such petition when any person requests such assistance pursuant to the Domestic Violence Program.

10. If requested by the court, Conciliation Court counselors shall assist and make investigations, reports and recommendations regarding child custody and visitation pursuant to the Conciliation Court laws and the Family Law Act.

11. The petitioner shall be entitled to one free certified copy of the orders and proof of service for his or her records.

12. Upon issuance of any order under this statute, the court shall, upon request of a party, order a copy of the orders be transmitted to such law enforcement agencies as are requested by the party. Said order shall instruct either the clerk, requesting party or attorney for the requesting party to transmit the court's orders by the close of the business day on which such orders were granted. The clerk, requesting party or attorney for the requesting party shall also transmit any subsequently filed renewal, modification, termination or proof of service of any of the aforementioned orders. A party may request transmittal of the aforementioned orders to law enforcement agencies having jurisdiction over locations where domestic violence may occur.

13. Willful violations of orders issued pursuant to Section 2(a) of this statute shall be a misdemeanor.

V. FAMILY OFFENSE PROGRAM OF THE FAMILY LAW COURT

The problem of domestic violence is wide-spread. It has been estimated 50% of all women will be battered at some time during their lifetime.

This problem is compounded by the legal system's inability to protect victims of abuse because of the inadequacy of existing laws and the lack of enforcement thereof. The attitudes of law enforcement, prosecutors, the private bar and the courts concerning domestic violence, of not getting involved in "family disputes", has resulted in very little, if any, legal recourse for the victims.

Quite often law enforcement will try to calm down the batterer in an attempt to avoid arresting him or her or avoid writing a report on the incident.

The proposed Family Offense Program is modeled after a similar New York program, which has been in operation for less than a year.^{31/} This proposed legislation will allow a victim of domestic violence the option of filing a complaint in the criminal court or filing a petition in the family law court.

The filing of a petition in the family court is for the purpose of keeping the family unit intact, and will enable a victim to obtain protective orders as well as counseling for the parties.

The filing of a petition in the criminal court is for the purpose of punitive action against the batterer, as well as the protection of society. However, the criminal court will still

have the option of diverting the defendant into counseling or other remedial programs.

The Study Group on Domestic Violence recommends that the Family Offense Program be implemented within an overall statewide Family Court system, such as recommended by the 1966 Governor's Commission on the Family and numerous other groups.

This Family Offense Program recommendation requires further study and is offered at this time primarily as a means of stimulating discussion of a Family Court system for California and as an alternative means of dealing with the problem of domestic violence.

PROPOSED FAMILY OFFENSE PROGRAM OF THE FAMILY LAW COURT

That there be created an act providing for a Family Offense Program of the Family Law Court, which act shall include the following:

1. The family law court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning misdemeanor acts which would constitute disorderly conduct, harassment, menacing, reckless endangerment, an assault or an attempted assault or sexual assault between spouses, between parent and child, between any members of a family, or between any unrelated members of a household, except that if such act involves a child who is below the age of eighteen, the family law court shall have exclusive original jurisdiction.

2. For purposes of this Act, "disorderly conduct" includes disorderly conduct not in a public place.

3. The appropriate law enforcement official, who may be a probation officer, sheriff, marshal, police officer or any other law enforcement official, shall advise any petitioner or complainant bringing a proceeding under this Act, before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including, but not limited to, the following:

- a) that there is concurrent jurisdiction with respect to family offenses in both the family law court and the criminal courts;

- b) that a choice of forum by a petitioner or complainant bars any subsequent proceeding in an alternate court for the same offense;
- c) the legal, social and practical consequences of an adjudication by the family law court and that an adjudication in the family law court is for the purpose of attempting to keep the family unit intact. Referrals for counseling, or counseling services, are available through Conciliation Court, welfare, and/or the probation department for this purpose;
- d) the legal, social and practical consequences of an adjudication by the criminal courts and that an adjudication in the criminal courts is for the purpose of punitive action against the offender.

4. A proceeding under this Act in the family law court is originated by the filing of a petition containing the following:

- a) an allegation that the respondent assaulted, sexually assaulted, or attempted to assault his or her spouse, parent, child, any member of a family, or any unrelated member of a household or engaged in disorderly conduct, harassment, menacing or reckless endangerment towards any such person; and

- b) the relationship of the alleged offender to the petitioner; and
- c) a request for a restraining order and/or the use of Conciliation Court or other counseling services; and
- d) an allegation that no proceeding specified in paragraph (a) of this subsection is pending in a criminal court with respect to the same act alleged in the petition.

5. A proceeding under this Act in the criminal court is originated by the filing of a criminal complaint.

6. No law enforcement official shall discourage or prevent any person who wishes to file a petition or sign a complaint under this Act from having access to any court for the purposes provided for in sections 4 or 5 of this act.

7. No proceeding under this Act shall be originated, based upon the same act which is or was subject to an action commenced in a criminal court.

8. No application may be made to the criminal courts in which a matter is pending in the family law court with respect to the same acts. Either court may, upon a showing of good cause and in the interest of justice, transfer a petition or complaint to the other court.

9. Upon the filing of a petition pursuant to this Act the family law court, upon a showing of good cause, may, in addition

to any other powers conferred upon it by this Act, issue the following temporary restraining orders:

- a) to stay away from the home, school, business or place of employment of the family or household member;
- b) to make an award of temporary child custody and to permit a parent to visit the child at stated periods and under specific terms;
- c) for the restraint of any party from in any manner molesting, harassing, attacking, striking, threatening, sexually assaulting, battering or disturbing the peace of the other party, family or household member or against any person to whom custody of the child is awarded;
- d) to abstain from drinking alcoholic beverages or taking any narcotic or controlled drugs without a prescription if the use of the same contributed to his or her offense;
- e) to have in his or her possession no firearm or other dangerous weapon unless granted written permission by the court.

A temporary restraining order is not a finding of wrongdoing.

10. Upon a filing of a petition pursuant to this Act in the family law court, a dispositional hearing shall be set on the earliest day that the business of the court will admit of, but not later than

15 days or, if good cause appears to the court, 20 days from the date of such order: When the matter first comes up for hearing, the party who obtained the temporary order must be ready to proceed.

At the first hearing the court shall advise respondent of the following:

- a) the charges pending against respondent;
- b) the right of respondent to have an attorney present to represent him or her; if he or she cannot afford an attorney, one will be appointed to represent him or her;
- c) the right to confront and to cross-examine witnesses against him or her;
- d) the right to call witnesses on his or her own behalf.

The respondent shall be entitled, as a matter of course, to one continuance for a reasonable period, if he or she desires, to enable respondent to prepare for the dispositional hearing.

11. If agreement to cease offensive conduct is reached, it must be reduced to writing and submitted to the family law court for approval. If the court approves it, the court, without further hearing, may thereupon enter restraining orders in accordance with the agreement, which shall be binding upon the respondent and shall in all respects be a valid order. The court record shall show that such order was made upon agreement.

12. At the dispositional hearing on a petition pursuant to this Act, the family law court shall make the following determination:

- a) if one or more of the alleged acts as set forth in Section 1 of this Act have occurred;
- b) if the alleged acts occurred between spouses, between parent and child, between any member of a family or between any unrelated members of a household;
- c) if the respondent is the perpetrator of the alleged acts;
- d) that no proceeding is pending in a criminal court with respect to the same act alleged in the petition;
- e) if the respondent is eligible for and would benefit from participation in the Family Offense Program;
- f) if there is good cause to grant the restraining orders requested in the petition.

A finding of wrongdoing at the dispositional hearing is not a finding of criminal guilt.

13. At the conclusion of a dispositional hearing on a petition pursuant to this Act, the family law court may enter an order:

- a) dismissing the petition, if the allegations of the petition are not established; or
- b) suspending judgment for a period not exceeding one year; or

- c) placing the respondent on the program of diversion for domestic violence for a period of no less than six months nor longer than two years; or
- d) placing the respondent on probation for a period not exceeding one year; or
- e) making restraining orders in accord with section (14) of this statute.

14. At or after the dispositional hearing and upon a finding of wrongdoing, the family law court may make the following orders:

- a) to make restraining orders in accord with section (9) of this Act;
- b) to award temporary support for the children of the parties where there exists a presumption of paternity pursuant to Civil Code Section 7004;
- c) to award temporary support for the petitioner when the respondent has a legal obligation to do so;
- d) to award monetary compensation to petitioner for losses suffered as a direct result of the abuse. Compensatory losses shall include, but are not limited to, loss of earnings or support, out-of-pocket losses for injuries sustained and moving costs;
- e) to order respondent to undergo medical or psychiatric treatment;

- f) to award attorney's fees and costs to the prevailing party;
- g) to satisfy all other conditions reasonable related to the rehabilitation of the offender.

15. In addition, the terms and conditions of the probation, diversion or disposition of the complaint may include, but not be limited to, referral of the defendant to a clinic, facility or professional for one or more examinations, diagnoses, counseling or treatment, requiring the defendant to report periodically to a probation officer; or release of the defendant to the custody of a residential treatment facility.

16. A copy of the restraining orders shall be filed by the court, petitioner, or attorney for petitioner, with the local law enforcement agency with jurisdiction over the location where domestic violence may occur. Any subsequent modification or termination of such order shall be filed in the same manner as herein provided.

17. A person may seek relief under this Act for herself or himself, or any parent or adult household member may seek relief under this Act on behalf of minor children or elderly persons by filing a petition with the family law court alleging abuse by the defendant.

18. Willful violation of these orders shall be a misdemeanor.

19. In all cases in which the offender is guilty of an act of domestic violence and the victim is the offender's child, spouse

or an elderly person, a condition of probation pursuant to Section 13(d) of this Act shall be mandatory counseling.

20. The prosecuting attorney, notwithstanding any other law to the contrary, may commence an action pursuant to this Act in the interest of any child, adult, elderly person, family or household member who is the victim of abuse if available police records or other verifiable sources indicate that such person has been the victim of abuse, unless the victim objects.

21. An action under this Act shall not preclude the petitioner or complainant from seeking any other civil or criminal relief not prohibited by this Act.

22. The Judicial Council shall prescribe such forms as are appropriate to effectuate the purposes of this Act. The petition shall be simple and permit a person to file in propria persona.

23. The Governor's Commission on Domestic Violence shall prepare forms for distribution to the official designated by the presiding justice of each judicial department for the compilation of data on family offenses, proceedings or actions, including, but not limited to, the following information:

- a) the offense alleged;
- b) the relationship of the alleged offender to the petitioner or complainant;
- c) the court where the action or petition was instituted;
- d) the disposition; and
- e) in the case of dismissal, the reasons therefore.

VI. DIVERSION PROGRAM FOR DOMESTIC VIOLENCE OFFENSES

Law enforcement and prosecution agencies continue to display reluctance in pursuing the filing and prosecution of criminal complaints against perpetrators of domestic violence. Several reasons given for this reluctance include: many victims subsequently decide not to prosecute the matter; the defendant is usually the family unit breadwinner and any jail sentence would result in economic hardship to the family; or, the case is felt to be weak because, as is common in many instances of domestic violence, there were no witnesses to the violent incident.

Incidents of domestic violence are usually not considered the type necessitating punitive action. However, law enforcement and prosecution agencies should treat domestic violence cases as serious matters, which they are, and should make every effort to direct the offender, if possible, into counseling or other rehabilitative programs in an attempt to break his or her cycle of violence.

One way this can be accomplished is through the utilization of the criminal justice system to impress upon the offender the seriousness of his actions, while allowing him the opportunity to change his violent behavior, such as through a diversion program for domestic violence cases. Currently there is no diversion program for domestic violence cases, and such a program would be beneficial for those offenders choosing to work positively at solving their problems to avoid the trauma and resulting stigma of having been a defendant in a criminal case.

RECOMMENDATION:

That there be created an act providing for a Diversion Program in the criminal courts and the family law court Family Offense Program in cases of domestic violence, modeled after Penal Code Section 1000 diversion for drug related offenses.

The Diversion Program shall be available to any person accused of an act of domestic violence, provided, however, said person is accepted into the Diversion Program.

VII. MODIFICATION OF JUDICIAL COUNCIL FORMS

The existing Judicial Council forms have proven inadequate to meet the needs of persons petitioning the court for restraining orders pursuant to Code of Civil Procedure Section 527(b). In an attempt to implement Section 527(b) procedures, several counties have devised their own forms to be used by victims seeking restraining orders pursuant to that code section. Other counties, in attempting to meet the needs of domestic violence victims and the mandate of Section 527(b), have issued 527(b) guidelines and have decided to use forms adopted by the Judicial Council pursuant to Rules 1285.10 and 1285.20: the Order to Show Cause (Marriage) and Request for Order and Declaration in Support of Order to Show Cause/Notice of Motion forms.

Understandably, these differing approaches taken in the implementation of Section 527(b) have led to a great deal of confusion in the legal community.

It is even more confusing for the lay person attempting to obtain protective orders. Unfortunately, many victims often cannot afford private counsel, yet they are unable, financially, to qualify for legal aid services. The result has been a number of individuals filing for protective orders in propria persona. Many of these individuals have been frustrated and confused by forms which they find difficult to fill out because of the lack of explicit instructions on how to fill out such forms. Many persons who file in propria persona are further frustrated by the fact that these forms do not state what information is required. As a result,

the court has sometimes refused to grant the requested orders, basing its decision on the ground the application and supporting declaration are insufficient on their face.

Furthermore, the respondent may be unable to clearly understand what conduct is mandated or prohibited by the orders or the possible consequences of his or her failing to abide by such orders.

RECOMMENDATION:

That the Rules of Court be amended to authorize the use of a new petition for protective orders which clarifies for the petitioner what information should be included in the petition if the document is filed in propria persona.

That an Orders of the Court form be authorized to allow the judge, to the extent possible, to designate the orders being issued by checking them off on the form.

Form #1 (see Appendix D) consists of a sample Petition and Declaration, an Order form and Responsive Declaration for use in 527(b) cases; Form #2 consists of a sample Order to Show Cause form and Application for Order and Supporting Declaration for use in the event the changes recommended in this report are adopted and implemented under the proposed Domestic Violence Prevention Act.

VIII. ATTORNEYS TO REPRESENT CHILDREN

Statistics show that children often suffer long-term psychological and physical effects when they witness and/or are victims of their parents' violent behavior. A large number of children who experience violent parents often become violent themselves as adults.

The short-term effects of domestic violence on children is often readily apparent: they are often taken from school by the mother in order to hide from the batterer; they often leave home to avoid a violent episode, many times when they should otherwise be asleep; or they often become victims of a temporary indigency until the parent can find other means of support. During this period of marital instability, the children are left with little emotional support from either parent, and sometimes they are left without even the bare necessities for physical well-being.

In many cases the court routinely appoints attorneys to insure the interests of the child are represented, such as in guardianship cases, in juvenile court matters in which the parent is alleged to be unfit, and even in probate cases to insure the child's money is spent wisely.

However, there currently is no statutory scheme to protect children from becoming unwitting victims of the physical and emotional violence between their parents. If a family situation results in a dissolving of the marriage, the court is empowered, pursuant to Civil Code Section 4606, to appoint private counsel

to represent the minor child when custody is in issue and when the court believes it would be in the best interest of the minor child to do so. (See Appendix A). This statute is limited to custody cases, however, and does not provide the court with express authority to appoint attorneys in other proceedings involving the disruption of the family.

This Study Group recommends legislation be enacted to enable the court to appoint counsel to represent minor children in proceedings in which the child is the unwitting victim of a violent situation, whether or not the particular circumstances fall within the purview of the Family Law Act.

Neither Civil Code Section 4606 nor case law provide guidelines for the representation of the minor child by appointed counsel. Two main themes have been advocated for legal representation of children: One, that the attorney should act as a guardian of the legal rights of the child (irrelevant questions are eliminated, evidentiary objections interposed); and the second, that the attorney should take an aggressive role in bringing information to the court which will assist the court in making a decision based upon the best interests of the child. In the latter theory, attorneys often interview the parties and witnesses, seek professional opinions and advice, and most often will make a recommendation to the court as to what they feel would be in the best interests of the child.

This Study Group supports the role of an attorney appointed for the child to be an aggressive one in which recommendations should be made to the court. Legislation designed to broaden the circumstances in which an attorney may be appointed should specifically address these issues.

RECOMMENDATIONS:

1. That Civil Code Section 4604 be amended to provide that where the court finds it would be in the best interests of the minor child, the court may appoint private counsel to represent the interests of the minor child.

2. That Civil Code Section 4604 be amended to include that private counsel appointed to represent the minor child may make recommendations to the court; and that the court, in rendering any decision having a direct effect on the minor child, may take into account recommendations of the appointed or retained counsel of the minor child.

3. That there be created a statute empowering the court to appoint private counsel to represent the interests of the minor child where domestic violence is in issue and where it is in the best interests of the minor child to do so.

IX. STATEWIDE DOMESTIC VIOLENCE HOTLINE

There is no central information center whereby victims of domestic violence can seek immediate assistance and information about available counseling, shelters and support systems.

It is particularly hard for victims living in rural areas of the state to seek needed assistance. A statewide toll-free telephone hotline would greatly benefit those persons with immediate crisis needs. (See Appendix E).

RECOMMENDATION:

A) That there be created a statewide toll-free number to respond to inquiries which will operate on a twenty-four hour basis seven days a week, and which will maintain the capability of responding effectively to: ^{32/}

- i) requests for referral to sources of help;
- ii) the need for immediate telephone counseling;
- iii) requests for referral of technical assistance in establishing and maintaining community programs to combat domestic violence and to help the victims of domestic violence.

B) The identity of all persons making inquiries and calls shall be kept confidential.

C) Data pertaining to the frequency and nature of telephone calls and other requests for assistance by the Domestic

Violence Hotline shall be maintained and made available to the Governor's Commission on Domestic Violence and/or any other governmental or private agency and the public.

D) The domestic Violence Hotline shall be funded by the state.

X. GOVERNOR'S COMMISSION ON DOMESTIC VIOLENCE

Each year hundreds of thousands of persons in California are victims of domestic violence. Yet there are few, if any, comprehensive statistics concerning the nature and extent of domestic violence.

Historically, law enforcement agencies, hospitals, social service agencies and the courts have failed to recognize domestic violence, in and of itself, as an official category for statistical purposes. Instead, the incidences of domestic violence are often hidden in assault and battery or homicide statistics. This lack of precise record keeping has made it impossible to accurately gauge the frequency and extent of domestic violence, or to effectively address the wide-spread problem. Although currently available statistics indicate domestic violence to be a serious problem throughout the country (See Appendix F), a problem transcending ethical, racial, socio-economic, educational and age groupings (See Appendix G), it is suggested such statistics reflect just the tip of the iceberg.

Until recently, the seriousness of domestic violence has been all but overlooked by the state. Yet, domestic violence is an ever-increasing serious social cancer which, in many instances, has proven fatal or permanently disabling to the victim.

There is an immediate need for a statewide study of the magnitude and extent of domestic violence in our society, followed by a comprehensive state plan capable of efficiently and effectively providing critically needed services to victims of domestic violence,

as well as proposing viable solutions to this increasingly widespread, pandemic problem.

The recommended Governor's Commission on Domestic Violence would be a means of collecting and analyzing data on domestic violence, providing information and technical assistance to public and private organizations for the prevention and treatment of domestic violence, establishing educational programs regarding domestic violence and the remedies and resources available to deal with such problems, coordinating all state programs providing services, funding or research relating to the problems of domestic violence and establishing new programs and legislative proposals in an attempt to eliminate domestic violence and alleviate its debilitating effects.

The establishment of such a commission would evidence the tenet that violent action by one person against another person in a domestic situation will no longer be tolerated.

RECOMMENDATION:

That there be created a Governor's Commission on Domestic Violence. The Commission shall be comprised of private and public social service agencies, law enforcement agencies, attorneys, community or governmental organizations which provide services to battered women and individuals who are presently, or have been in the past, victims or perpetrators of domestic violence.

The powers and responsibilities of the Commission shall include, but not be limited to:

33/

1) The establishment of an office for coordinating and providing information and technical assistance to public and private local organizations and to individuals and for insuring the availability to victims of existing services of all public and private agencies, including law enforcement agencies and the judiciary, for the prevention and treatment of domestic violence; and

2) The establishment of a statewide program for education of law enforcement agencies, the legal community, social service agencies, the medical community and the public regarding the problem of domestic violence and the remedies and resources available to deal with such problems; and

3) In cooperation with the Department of Education, the Commission shall develop a kindergarden through post secondary educational curriculum relating to domestic violence, including training in all colleges of education, medicine, nursing, law, social work and psychology, with a particular emphasis on prevention of the generational continuation of abuse within the family; and

4) The establishment of a system for collecting and analyzing data on domestic violence, such data presented in an annual report to the Governor and the public: strict confidence shall be observed in all contact with victims of domestic violence and/or their families. Any record, report or file maintained by the Commission shall be confidential, except that the Commission may release statistical or other information, while not revealing names; and

5) The establishment of a procedure for identifying, assessing, and coordinating all state programs providing services, funding or research or demonstration programs related to problems of family violence in order to eliminate duplication of effort, inefficient use of resources, and lack of strategic objectives and priorities in the allocation of time, talent and funds; and

6) To make recommendations to the Governor at least annually with respect to the coordination of overall policy and development of objectives and priorities of all state programs, including legislative proposals, relating to the effort to eliminate domestic violence and its effects; and

7) To stimulate new programs within state agencies where necessary to fill gaps in services, funding, research or demonstration programs revealed by the process of identification, assessment and attempted coordination; and

8) To seek and accept funds which may be available from the federal government or other sources in order to augment state funds appropriated for the purposes of these programs and shall make every effort to qualify these programs for such funding.

XI. EDUCATIONAL PROGRAMS ON DOMESTIC VIOLENCE

People within the criminal justice system and the legal community have traditionally been insensitive to the problem of domestic violence. This insensitivity is partly a result of lack of information explaining the complexity of this social problem and destroying the myths that have developed around it.

Insensitivity to a problem cannot be expected to correct itself. Law enforcement agencies, prosecutors and judges have not developed strategies for improving awareness of the problem of domestic violence and therefore the legal system continues to be unable to deal effectively with domestic violence.

Regardless of how many legislative recommendations of this Study Group are enacted to improve legal remedies for victims of domestic violence, these victims will still not be able to seek effective assistance from the legal system if those who are its functionaries remain insensitive and do not recognize their responsibility to use the authority of the law to protect victims from abuse.

Therefore, the following recommendations are made with the objective of encouraging, through education, a greater awareness of and sensitivity to the problem of domestic violence and the people who are experiencing it.

RECOMMENDATIONS:

A) That a statute be enacted to provide as follows:

All law enforcement agencies in the state shall provide officers employed by them with an educational and training program designed to inform the officers of the problem of domestic violence, procedures to deal with such problems, and provisions of state statutes dealing with domestic violence, and the services and facilities available to abused family and household members. ^{34/}

B. That all law schools in the state incorporate a study of the subject of domestic violence in their Family Law curriculum. It is further recommended that the California Judicial College and California Judges Association include in its curriculum a study of the legal, social and practical consequences of domestic violence.

Respectfully submitted,

ROBERT FAINER

HERMA HILL KAY

DEBORAH KANTER

BILLY G. MILLS

SANDRA JOAN MORRIS

ELIZABETH M. O'NEILL

JUDITH S. WALLERSTEIN

(Note: Commissioner Kanter was absent and therefore did not vote on the adoption of the Report.)

ANNOTATIONS

INTRODUCTION

- (1) Senate Bill 91, Enacting Welfare & Institutions Code Section 18290 et seq.
- (2) California Homocides, 1971.
- (3) California Homocides, 1971.
- (4) Conflict Management: Analysis/Resolution, 1973, by the Kansas City Police Department, p. 139.
- (5) Crimes of Violence, Staff Report to the National Commission on the Causes and Prevention of Violence (Washington, D.C., U.S. Government Printing Office, 1969) p. 360.
- (6) Blackstone's Commentaries, 422-445 (1765).
- (7) Senate Bill 91, Supra; also Laws of New York, Chapter 450, (1977); Oregon Laws, Chapter 846, (1977); Laws of Alaska, Chapter 72, (1977).
- (8) Assembly Bill 1019, Enacting Code of Civil Procedure Section 527(b).
- (9) Bruno v. McGuire, Case No. 21946/76, Supreme Court of the State of New York, County of New York (1976); Scott v. Hart, et al., Superior Court of the State of California, County of Alameda (1976).
- (10) Center for Women Policy Studies, Response Newsletter, Vol. 1, Issue 8, April, 1978.
- (11) California Civil Code Sections 4000 et seq.
- (12) Gay Search, "London: Battered Wives," Ms., June, 1974, p. 26.

DEFINITIONS

- (13) See Oregon HB 2438, ORS Chapt. 107 (1977); Penn. SB 1243 Act 218 (1976); Penn. SB 964 (1977) passed; Ky. HB 499 (1978) failed; Ohio HB 835 (1978) pending; Calif. AB 3093(effective Jan. 1, 1979), Criminal Procedures Code Sec. 527.6; Neb. amend to LB 623 (1978) pending; Georgia HBLC 31535 (1978) pending.

PROTECTIVE ORDERS

- (14) Battered Wives, Del Martin, Glide Publications 1976. p. 93.

- (15) Cal. State Bar Assoc., Conference of Delegates Resolution 1-14a-78. Approved Sept. 9, 1978.
- (16) Id.; Colo. Amend to HB 1143, CRS 14-10-108 (1978).

LAW ENFORCEMENT PRACTICES

- (17) Oregon HB 2438, ORS Chapt. 845 (1977); Mass. S 1445 (1978) passed; Ohio HB 835 (1977-8) pending; Conn. SB 958 Public Act 77-336 (1977) passed; Mich. HB 6127 pending; Ky. HB 499 (1978) failed; Missouri HB 1023 failed; New Jersey S No. 3156 (1977-8) pending; Colo. HB 1633 (1977) failed; Oregon HB 2471 (1977) passed; W. Virg. HB 1082 (1978) failed; Georgia HB LC7 31535 (1978) pending; Iowa HB 2267 (1978) failed; Colo. Amend to HB 1143, CRS 14-10-108 (1978); Ohio HB 957 (1977-8) pending; and Neb. Amend. LB 623 (1978).
- (18) Police in the white middle-class city of Norwalk, Conn., received roughly the same number of wife-abuse calls as police in a Harlem precinct of the same size -- from a study by Dr. Morton Bard, Family Crisis Intervention: From Concept To Implimentation, L.E.A.A. Grant NI 70-68. See also Stark & McEvoy, "Middle-class Violence," Psychology Today, Nov. 1970, p. 52-53.
- (19) 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886); see also People v. Scheuren (1973) 10 C.3d 553, 111 Cal. Rptr. 129, 516 P.2d 833; U.S. v. Steele (9th Cir. 1972) 461 F.2d 1148, 1151; Two Guys from Harrison-Allenton, Inc. v. McGinley (1964) 366 U.S. 582, 588, 81 S.Ct. 1135, 6 L.Ed 2d 551; Wade v. City and County of San Francisco (1947) 82 C.A.2d 337, 338-339, 186 P.2d 181; and Brock v. Sup. Ct. (1939) 12 C.2d 605, 610, 86 P.2d 805.
- (20) Administrative Law Text, 3rd Ed., 1972, West Pub. Co., p. 93.
- (21) Mass. S 1445, Chapt. 208 (1978) passed; Ky. HB 499 (1978) failed; Colo. HB 1633 (1977) failed; See also second draft of settlement decree in Scott v. Hart: (suit against Oakland Police Department for non-enforcement of restraining orders in domestic violence situations) "Responding officers shall be specifically trained to interview the complaining witness as fully as possible and to investigate at the scene to determine if a crime has been committed. Where it is evident to the officer that the victim has been injured physically and/or the victim alleges that she has been physically injured, the following procedure will be followed: (the procedure is set forth in detail)." p. 2-3.
- (22) Iowa HB 2267 (1978) failed. See also second draft of settlement decree in Scott v. Hart: "the responding officer shall... (1) request the suspect to leave the premises forthwith and render a civil standby for the suspect to remove his/her

belongings; (2) should suspect refuse to leave upon request and grounds exist for an officer arrest for trespass, the suspect shall be arrested and may be cited and released." p. 7; In England, a person may be arrested without a warrant if the police have probable cause to believe an injunction has been breached -- if by reason of use of violence or of his entry into any premises or areas.

- (23) Colo. HB 1143, CRS 13-6-104 (1978) passed, Police shall serve the order; service fee of \$10.00; Colo. HB Amend to 1143 (1978) pending (CRS 14-10-109) if valid order, police shall advise respondent there is a valid order, that respondent has right to request hearing and that respondent must leave premises. San Diego Police Dept. Instruction 4.11.
- (24) Colo. HB 1143, CRS 13-6-104 (1978) passed.
- (25) Iowa HB 2267 (1978) failed. Provided that police officer be subject to prosecution if, upon request of victim to file assault charges, officer fails to proceed to so do without unnecessary delay.
- (26) Ore. HB 2438, Chapt. 845 (1977); Flo. HB 62, Chapt. 77-67 (1977); Colo. HB Amend to 1143 (1978) pending (CRS 14-10-109); Ky. HB 499 (1978) failed, went further than this recommendation.
- (27) Ore. HB 2438, ORS 133.310, Chapt 845 (1977); Penn. SB 964 (1977) passed. San Diego Police Dept. Instruction 4.11.
- (28) Ore. HB 2438, Chapt. 845 (1977).
- (29) Mass. S 1145 (1978) passed; New York S-6617, A-8842, Chapt. 449, passed; Mass. S 1817 (1977); Georgia HB LC7 31535 (1978) pending.

CONCILIATION COURT

- (30) See Neb. Amend. LB 623 (1978) pending.

FAMILY OFFENSE PROGRAM

- (31) See New York S-6617, A-8842 (1977), to amend the Family Court Act, commencing with Section 812. See also Battered Women, Maria Roy, Van Nostrand Reinhold Co., 1977. pp. 317-321; Conn. SB 958, Public Act 77-336, passed; Neb. Amend LB 623 (1978) pending, provides for counseling if victim is spouse.

STATEWIDE HOTLINE

- (32) See Mass. H No. 6088 (1978) failed; United States HR 12299 (1977) pending, the Miller Bill.

GOVERNOR'S COMMISSION

- (33) Minn. Chapt 428 (S.F. 124) (1977) passed; Ore. HB 2438, Chapt. 845 (1977) passed; Ky. HB 750 (1978) failed; Maryland House Joint Resolution 61, passed; Colo. HB 1633 (1977) failed; Neb. Amend. LB 623 (1978) pending, mandatory police training to inform officers of the problem of domestic violence, procedures to deal with such problems, and services and facilities available to abused family and household members, also educational programs -- kindergarten through post-secondary through Dept. of Welfare in cooperation with Dept. of Edu.; Iowa SB 2057, failed, provided for mandatory data collection by licensed hospitals, every physical licensed to practice medicine in the state, every public health nurse, every local law enforcement agency, also provided for Commissioner to design and impliment a uniform method of collecting data on battered women; Ohio HB 987 (1977-8) pending (ORS 5110.01-5110.05) provides for estab. of a program of Family Protective Services for Battered Women within the Dept. of Public Welfare; see also second draft of settlement decree in Scott v. Hart: information and statistics shall be compiled in all domestic violence cases and shall include "(a) the number of requests for police assistance in domestic violence situations; (b) the type of OPD response to the request for assistance and the reasons for that response; (c) whether any arrests were made in responding to the call for assistance, the reasons why arrest was made and the Penal Code section under which the arrest was made; (d) where no arrest is made, the reasons why no arrest was made." See also United States S 2759 (1978) pending, the Cranston Bill; and HR 12290 (1977) pending, the Miller Bill.

EDUCATIONAL PROGRAMS

- (34) New Jersey AB 3170 (1977) pending.

APPENDIX A

CIVIL CODE SECTIONS

I. Civil Code Section 4359:

During the pendency of any proceeding under Title 2 (commencing with Section 4400) or Title 3 (commencing with Section 4500) of this part, upon application of either party in the manner provided by Section 527 of the Code of Civil Procedure, the superior court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if such order is directed against a party, requiring him to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures; (2) enjoining any party from molesting or disturbing the peace of the other party or any person under the care, custody, or control of the other party; (3) excluding either party from the family dwelling or from the dwelling of the other upon a showing that physical or emotional harm would otherwise result, as provided in Section 5102; and (4) determining the temporary custody of any minor children of the marriage.

2. Code of Civil Procedure Section 187:

When jurisdiction is, by the constitution or this code, or by any other statute, conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

3. Code of Civil Procedure Section 527(a):

An injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. A copy of the complaint or of the affidavits, upon which the injunction was granted, must, if not previously served, be served therewith.

No preliminary injunction shall be granted without notice to the opposite party; nor shall any temporary restraining order be granted without notice to the opposite party, unless it shall appear from facts shown by affidavit or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice. In case a temporary restraining order shall be granted without notice, in the contingency above specified, the matter shall be made returnable on an order requiring cause to be shown why the injunction should not be granted, on the earliest day that the business of the court will admit of, but not later than 15 days or, if good cause appears to the court, 20 days from the date of such order. When the matter first comes

up for hearing the party who obtained the temporary restraining order must be ready to proceed and must have served upon the opposite party at least two days prior to such hearing, a copy of the complaint and of all affidavits to be used in such application and a copy of his points and authorities in support of such application; if he be not ready, or if he shall fail to serve a copy of his complaint, affidavits and points and authorities, as herein required, the court shall dissolve the temporary restraining order. The defendant, however, shall be entitled, as of course, to one continuance for a reasonable period, if he [1] desires it, to enable him to meet the application for the preliminary injunction. The defendant may, in response to such order to show cause, present affidavits relating to the granting of the preliminary injunction, and if such affidavits are served on the applicant at least two days prior to the hearing, the applicant shall not be entitled to any continuance on account thereof. On the day upon which such order is made returnable, such hearing shall take precedence of all other matters on the calendar of said day, except older matters of the same character, and matters to which special precedence may be given by law. When the cause is at issue it shall be set for trial at the earliest possible date and shall take precedence of all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

4. Code of Civil Procedure Section 527(b):

A temporary restraining order may be granted with or without notice to restrain any person upon an affidavit which, to the satisfaction of a court, shows reasonable proof of a past act or acts of actual violence resulting in physical injury for the purpose of preventing a recurrence of actual domestic violence and assuring a period of separation of the parties involved. A temporary restraining order may be granted pursuant to this subdivision to any person who, prior to or at the time such order is granted, was actually residing with the person or persons at whom such order is directed, and, in the case of a marital relationship, notwithstanding that a petition for legal separation or annulment or dissolution of marriage has not been filed.

A temporary restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed 30 days, unless otherwise terminated by the court.

In case a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be dissolved, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted.

The county clerk shall transmit a copy of each temporary restraining order, or extension, modification or termination, thereof, granted pursuant to this subdivision, by the close of the business day on which such order was granted, to the local law enforcement agency with jurisdiction over the residence of the party which obtained the restraining order or the residence at which the recurrence of actual domestic violence is the subject of the

temporary restraining order, if requested by an attorney of record or a person who acted in propria persona and approved by the court. Each appropriate law enforcement agency may make available, through an existing system for verification, information as to the existence and current status of any temporary restraining order issued pursuant to this subdivision to any law enforcement officer responding to the scene of reported domestic violence.

5. Code of Civil Procedure Section 1769:

(a) at or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(b) any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(c)....

6. Civil Code Section 4606:

In any proceeding under this part where there is in issue the custody of a minor child, the court may, if it finds it would be in the best interests of the minor child, appoint private counsel to represent the interests of the minor child. When the court appoints counsel to represent the minor, counsel shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. Such amounts shall be paid by the parents in such proportions as the court deems just.

7. Code of Civil Procedure Section 527.6 (AB 3093, 1978):

(a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order, and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, "harassment" is a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys or harasses such person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff. "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order

in accordance with the provisions of subdivision (a) of Section 527 of the Code of Civil Procedure. A temporary restraining order may be granted with or without notice upon an affidavit which, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(d) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response which explains, excuses, justifies or denies the alleged harassment. At the hearing, the judge shall receive such testimony as is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting such harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) Nothing in this section shall preclude either party from representation by private counsel or from appearing on his or her own behalf.

(f) Upon filing of a petition for an injunction under this section, the defendant be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition.

(g) The clerk shall transmit a copy of each temporary restraining order or injunction or modification on termination thereof, granted under this section, by the close of the business day on which such order was granted, to such law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency may make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

(h) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(i) Any willful disobedience of any temporary restraining order or injunction granted under this section shall be a misdemeanor pursuant to Section 166 of the Penal Code.

(j) This section shall not apply to any action covered by subdivision (b) of Section 527 of this code, or by Title 1.6C (commencing with Section 1788) of the Civil Code. Nothing in this section shall preclude a plaintiff's right to utilize other existing civil remedies.

(k) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

APPENDIX B

CRIMINAL CODE SECTIONS

Excerpted from:

HANDBOOK ON DOMESTIC VIOLENCE

CALIFORNIA DEPARTMENT OF JUSTICE

INFORMATION PAMPHLET NO. 11

April 1978

pages 20-26

A. SUMMARY OF CRIMINAL AND CIVIL LAWS
THAT RELATE TO DOMESTIC VIOLENCE

This section of the Handbook summarizes California laws relevant to domestic disputes, minor as well as violent in nature. Criminal sanctions and civil remedies are described.

A. CRIMINAL SANCTIONS

1. Assault and Battery - Penal Code §§ 240, 242.

An assault is an attempt to commit violent injury upon another person, combined with the realistic ability to inflict the injury. A battery is the actual use of force or violence upon another person. Assault and battery is the most common criminal action arising out of domestic violence situations.

Because assault and battery is a misdemeanor, a police officer cannot make an arrest unless (1) the crime is committed in her or his presence; or (2) the victim has filed a complaint with the district attorney and a warrant has been issued; or (3) the victim makes a citizen's arrest. (For more detail, see discussion at page 6.)

2. Assault with a Deadly Weapon or Force Likely to Produce Great Bodily Injury - Penal Code § 245.

Assault with a deadly weapon is a felony. The officer need only have a reasonable belief that the crime has been committed, and that the person arrested committed it, in order to make an arrest. Although cases of battering do not usually involve weapons such as firearms or knives, a closed fist may be regarded as a deadly weapon or force under this statute. Actual injury is not required, only the use of a deadly weapon or force. (For more detail, see discussion at page 6.)

3. Assault with Intent to Commit Murder - Penal Code § 217.

Assault with intent to murder is a felony. The prosecution must prove that the batterer intended to kill. This intent can be shown by threats, conversations, past behavior, the amount of force used, and any other similar evidence. Despite the fact that many victims of battering believe that their assailant intends to kill them, and the fact that one out

of eight homicides in the U.S. involve violence between spouses, arrests in this situation rarely occur under this statute. This is because the "intent to kill" is difficult to prove.

4. Mayhem - Penal Code § 203.

Mayhem is the removal, disfiguring, or disabling of a part of another person's body, such as the fingers, hands, tongue, eyes, ears, lip, or nose. This crime is relevant to cases of domestic violence where a woman loses the use of part of her body during a beating.

5. Assault with Intent to Commit Mayhem - Penal Code § 220.

This felony requires an intent to amputate, disfigure, or disable a part of the body. An attack and injury alone will not be enough to show the assailant's intent. However, any disfigurement, such as the loss of eyesight or fingers, or a permanent scar will infer the required intent.

6. Possession of a Deadly Weapon with Intent to Assault - Penal Code § 467.

This statute is useful in the domestic violence situation where there have been threats without actual harm. A deadly weapon may be a gun or a knife, as well as other objects depending on the manner in which they are intended to be used, such as books, bats and other heavy, blunt objects.

Because it is a misdemeanor, the woman must file a complaint. The statute can be used to prevent violent confrontation, if the man is arrested and taken into custody. It is more likely, however, that the man will be released on bail or released on his own recognizance. The original situation might be aggravated, and the likelihood of violence against the woman might be increased. If a woman intends to use this law, she may wish first to contact a shelter to arrange for a safe place to stay.

7. Murder and Justifiable Homicide - Penal Code §§ 187, 198, 199.

Murder is the killing of another person. In some situations, however, the killing of another person is justifiable because it is done in self-defense. Showing justifiable

homicide is crucial to the defense of a victim of domestic violence who kills her assailant.

To prove justifiable homicide, a victim of domestic violence must show:

- (1) she was resisting the assailant's attempt kill or seriously injure her;
- (2) she actually feared that she would lose her life or suffer severe injury;
- (3) the danger to her was immediate and impending;
- (4) she did not use excessive force to defend herself.

The requirement of immediate and impending danger means that a woman must be faced with attack before she can be justified in killing the batterer in self defense. As a practical matter a woman's only opportunity to defend herself may be when her assailant is off-guard and not beating her. Recent court cases have suggested that killing in self-defense may be justifiable under certain circumstances, even if no imminent danger exists.

Some courts have found there was no defense of justifiable homicide where the woman had an opportunity to escape her attacker and did not do so. In California, however, there is no "retreat" requirement; a woman attacked in her home may stand and defend herself, and may kill in self defense one who breaks into her home with felonious intent.

A woman may use only as much physical force as is necessary for her self-defense. Simple assault and battery or threats by an attacker will not justify killing the attacker. The court will look to many factors, including the nature of the attack, to determine the necessity of killing in self defense.

8. Woman Beating - Penal Code § 273.5.

This statute makes it a felony for any man or woman to use physical force on a person of the opposite sex he or she is living with. Since it is a felony, the officer can make an arrest even if the officer was not present at the time of the criminal act. Generally, injuries must be visible. Prosecution may be difficult if there are no marks of injury and no medical testimony about injury suffered by the victim.

District attorneys may be reluctant to charge an assailant in a domestic dispute with a felony. Factors considered are that the higher bail on felony arrests may strain a limited family budget and that longer jail sentences for felonies can worsen an unstable relationship and family economic problems.

9. Disturbing the Peace - Penal Code § 415.

This statute makes threatening and fighting conduct, or the use of vulgar, profane or indecent language, in the presence of a child or a woman, a misdemeanor. Visible abuse is not required.

The statute may be used as a preventive measure against some forms of violence.

10. Peace Bond - Penal Code § 706.

Where the court concludes that a person may "disturb the peace," the person complained of may be required to post a peace bond up to \$5000, enforceable for six months and renewable. Failure to deposit the bond with the court may result in imprisonment. If the person disturbs the peace after the bond is posted, the penalties are loss of money and possible criminal action.

The peace bond is rarely used in California because of questions about its constitutionality.

11. Burglary - Penal Code § 459.

This statute makes the entering of any house or room with intent to commit a felony illegal. The crime must be committed by someone with no right to be in the room or building. Therefore, a man who enters his own home with the intent to commit a felony cannot be guilty of burglary. A woman who has separated from her spouse and lives in a separate dwelling, however, is protected by the statute if her husband attempts to break into her separate dwelling.

12. Unlawful Entry - Penal Code § 602.5.

This crime is a lesser crime than burglary, but also involves the unauthorized entry or presence in someone else's dwelling. If the man pays the rent on the premises, he cannot be guilty of unlawful entry.

Since it is a misdemeanor, the woman who wishes a man off her premises must make a citizen's arrest or file a complaint.

13. Forcible Entry and Detainer - Penal Code § 418.

Anyone using force or violence to gain entry upon the premises of another is guilty of a misdemeanor under this statute. Because the purpose of the statute is to keep the peace, a woman might argue that the man's ownership of the property is irrelevant.

14. Malicious Mischief and Vandalism - Penal Code §§ 594, 603.

Malicious mischief involves the destruction of property belonging to another. Vandalism is a form of malicious mischief, where the criminal forcibly enters a dwelling belonging to another and damages or destroys any property in the dwelling.

In a domestic confrontation between spouses these sanctions rarely apply, since any property damaged usually belongs to both husband and wife. A man would be guilty of malicious mischief if the property destroyed belonged to the woman only.

15. Criminal Contempt - Penal Code § 166.

It is a misdemeanor to disobey any orders issued by any court. This statute provides criminal sanctions against violating civil restraining orders. Restraining orders may be sought by victims of domestic violence to exclude an assailant from the premises in which the woman resides, to prohibit the assailant from disturbing the peace, or to determine the temporary custody of any children. Restraining orders are discussed more fully in section B of this chapter, "Civil Remedies".

Law enforcement officers may be reluctant to arrest a man on the victim's premises in violation of a restraining order unless the victim produces clear proof of the violation and a certified copy of the restraining order.

16. Felony Child Stealing - Penal Code §§ 278, 278.5.

It is a felony for any person who does not have legal custody rights over a child to take away, detain or hide that child from the person who has lawful custody over the child. The child must be returned to the person with legal custody at the expense of the defendant.

If there is no court order of custody, both parents have lawful custody over the child. In this case, where there is no custody order, it is not unlawful for the woman to take the children with her if she must leave a violent home to protect her safety and that of her children.

Child custody and felony child stealing is discussed in detail in section 13 of Chapter 2 of this Handbook.

17. Child Abuse

It is a crime for any person to physically abuse or sexually assault a child. (For example, see Penal Code § 288 (a) and (b), § 261.5. Further discussion of child abuse is covered in Chapter 3 of this Handbook at page

18. Imprisonment: Minimum and Maximum Penalties

The crimes discussed in this chapter are either misdemeanors or felonies. A misdemeanor is a less serious crime that is punishable by a fine or imprisonment in county jail for a term of less than one year. A felony is a serious crime punishable by imprisonment in a state prison.

Victims who decide to bring criminal charges against their attackers may discuss with the district attorney assigned to the case the probable sentence that the attacker will receive if convicted of a crime. A brief description of the California law on sentencing is set forth below. 6/

6. For detailed analysis of California's Determinate Sentence Law of 1976, see Cassou, "Determinate Sentencing in California: The New Numbers Game," 9 Pacific Law Journal 1 (1978).

The Determinate Sentence Law of 1976 governs the imposition of prison sentences for felony crimes. The majority of prison terms under the new law are determined by adding the "base term" and any "enhancements". Also, there are "limitations" set on the maximum term.

Base Term. Every crime covered by the new law carries a range of 3 possible terms, an upper, middle and lower term. The judge must choose the middle term as the base term, unless there is a hearing which shows aggravating or mitigating circumstances. If aggravating circumstances are shown at the hearing, the upper sentence will be used as the base term. If mitigating circumstances are shown, the lower sentence will be used.

Enhancements. Once a base term is chosen for the particular crime charged, the sentence can be made longer if certain enhancements are found. The sentence will be lengthened if:

- (1) the defendant was armed with a firearm or use a deadly weapon (Penal Code § 12022);
- (2) the defendant used a firearm; (Penal Code § 12022.5);
- (3) the defendant intentionally caused great bodily injury (Penal Code § 12022.7);
- (4) the defendant caused great loss of property (Penal Code § 12022.6);
- (5) there were prior prison terms actually served by the defendant (Penal Code § 667.5);
- (6) consecutive sentences may be imposed (Penal Code §§ 669, 1170.1).

There are limitations on the total sentence, and these are covered by Penal Code §§ 1170.1(a), 1170.1(f), and 1170.1(d).

19. Probation

For first offenses, the defendant is usually released on probation. The woman may contact the District Attorney about a supervised probation with mandatory therapy. (See Chapter 2, "Sentencing", page 25.)

APPENDIX C

Excerpted from:

TREATMENT OF DOMESTIC VIOLENCE
IN THE CONCILIATION COURT OF
THE SUPERIOR COURT OF SAN DIEGO COUNTY

by:

Murray Bloom, Director

March 1978

pages 5-10

THE SAN DIEGO CONCILIATION COURT DOMESTIC VIOLENCE PROGRAM

A victim of domestic violence may contact the Conciliation Court by telephone and arrange for a preliminary interview. Pursuant to the Code under which we exist, if the party (1) is married, (2) has children in the family residence whose welfare may be affected by the domestic controversy, and (3) is interested in pursuing counseling for the problem, the counselor will assist the party in evaluating the emotional aspects of the case and discuss immediate assistance. Referral may be made to the Battered Women's Project of San Diego County or the Underground Railroad for Battered Spouses whereby she may immediately be removed from the home with the children and placed into a friendly home away from the battering husband if the fear of continued violence exists. The para-legal of the Conciliation Court will assist the party in developing a declaration to the Judge of the Conciliation Court outlining the fact that the violence has occurred, giving examples and dates, and requesting the assistance of the Court by temporary restraining order and an order for counseling in the Court.

The above party is one who has no legal representation. If a party is referred by an attorney, the attorney will draw up the declaration and order for the Judge of the Conciliation Court (please see Addenda A and B, sample declarations and order respectively).

Upon acceptance of the declaration and Petition for Conciliation, the Judge of the Conciliation Court will sign the order as recommended by the counselor, the petitioner having met the above listed requirements, and the Court will submit the appropriate papers for service to the Sheriff's Office. The charge by the Sheriff's

Office for such service is \$8.50, which the client must pay unless unable to do so. If the client is unable to do so, it will be done for free. If the client is represented by an attorney, the attorney will arrange for service.

On the temporary restraining order and order to report for counseling, is contained the date of the Conciliation Court conference. Approximately one week after the Petition is received and the order has been delivered to the Sheriff's Office, a letter is sent by the Conciliation Court (Addendum C) which explains the situation to the respondent-battering spouse. The letter is meant to have an explanatory effect, somewhat of a softening effect, but still expressing the authority of the Court along with an invitation to the party to call for further information.

During the conference, which may be approximately one and-one-half hours, the parties are encouraged to express their feelings, explore alternatives, and encouraged to pursue on-going counseling to overcome the problems which have led up to the violence in the family.

Since our Conciliation Court is not intended nor staffed to do on-going counseling, we may initially see the parties one or two times, and refer them to a community agency on our approved list for on-going counseling. When this is done, a follow-up conference is set in the Conciliation Court for approximately two or so months after the referral to the other agency. The purpose of the follow-up conference is to see to it that the parties are continuing in a program of help and/or that they may have made a decision to terminate the marriage and are receiving assistance to "close the book gently".

In all cases, the Conciliation Court places much emphasis on the effects of the marital situation on the children. In cases where a temporary separation is effected, the Conciliation Court works hard at assisting the parties in developing a trial visitation plan with the understanding that although the parents may be at war, the children have a psychological need and right to continue a decent relationship with both parents. Frequently when parents dissolve a marriage, one of the parties may feel that the respective non-custodial parent has no right to a relationship with the children, "I am divorcing you and 'they are my children'". The Conciliation Court does not agree, unless the continuing relationship of the children with that parent may be destructive.

DOMESTIC VIOLENCE - A SYMPTOM OF A SICK RELATIONSHIP - A CONCERN FOR OUR COMMUNITY.

Our San Diego experience and the literature available to us has shown us that very little is known about the numbers in our community or country. Estimates vary from four million families in our country to forty million, where violence in various degrees occurs between the family members. Violence may be a simple slap to a serious situation where bones are broken, eyes are knocked out and deaths occur. F.B.I. statistics indicate that more enforcement officers are killed responding to domestic disturbance calls than most other calls.

In many families where domestic violence has occurred, an examination of dynamics of the relationship and of the individual parties shows us that there are serious emotional problems within

the unit and that violence is merely a symptom of these emotional problems, a way of responding to the frustrating elements of life with which we all must deal.

SOME CHARACTERISTICS OF THE PARTICIPANTS AS OBSERVED BY A CONCILIATION COURT COUNSELOR:

THE BATTERED WOMAN

1. May have been a battered child.
2. May have come from a violent family.
3. May have been abused (sexually as a child by a family member (possibly stepfather).
 - (a) Mother would not acknowledge or accept the existence when the child would report this to the mother.
4. May have poor self-image.
5. May be very insecure, fearing the loss of security if this relationship is broken.
 - (a) At least this is a relationship where somebody does care -- negative or positive, "I don't want to lose it for fear of what I may have to face."
6. May be unable to see choices -- may feel deserving of a beating, having received messages "you are no good."
7. May have feelings of inability to "make it on her own."

THE BATTERING MAN

1. May come from violent family and have been a battered child.
2. Does not communicate or share problems with his spouse.
 - (a) Not trusting or being embarrassed to share these

feelings.

(b) Never taught or allowed by domineering father to express feelings -- "you are a sissy if you cry."

3. Excessive pressure to succeed with a perceived inability to meet these unreasonable expectations to succeed.
4. Very frustrated when stumbling-blocks develop.
5. Much difficulty in verbalizing or expressing feelings -- develops into great anger, sometimes directed inwardly causing depression, high anxiety, excessive drinking or drug abuse.

(As stated previously in this paper, however, we find that once this person finds someone whom he can trust and verbalize these feelings with professional help, some relief does occur. However, much support is needed to continue this person in a program where he can get help because he may not have the ability to follow through unless immediate results occur.)

6. He may have an inadequate self-image and is fighting to compensate for these feelings of inadequacy.
7. He may be inflexible.

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4 Attorney for Petitioner, In Pro Per
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10 In re the marriage of)
11 Petitioner: JANE DOE) CONCILIATION COURT NO. _____
12 and) DECLARATION OF JANE DOE IN
13 Respondent: JOHN DOE) SUPPORT OF TEMPORARY RESTRAIN-
14) ING ORDERS AND COUNSELING

15 I, JANE DOE, declare and state as follows:

16 That I am the Petitioner in the above-entitled action.
17 I have been married to Respondent, JOHN DOE, since August 5,
18 1967. I have two minor children of this marriage, BRIAN DOE,
19 born May 7, 1972 and KATHY DOE, born September 24, 1974.

20 That on August 21, 1977 Respondent, for no stated reason,
21 began to punch me in the arms, chest and around the face. He
22 told me I better not be seeing another man, and if I did he
23 would kill us both. I was pretty bruised after this incident,
24 including a black left eye, a sprained left wrist and bruises
25 on my arms and chest area where Respondent tried to make me
26 ugly for other men. During this time Respondent called me alot
27 of dirty names. I was too embarrassed to seek the attention of
28

1 a physician.

2 That on September 12, 1977 Respondent and I were driving
3 with our children to his mother's house. As we were driving
4 north on Interstate 5 Respondent started yelling that I had
5 better behave in front of his mother and not say anything he
6 did not want me to say. The next thing I knew, he had his fist
7 placed squarely in my left cheek and was pressing my head against
8 the car door window. Respondent then began to punch me in the
9 cheek, yelling the whole time that I had better behave as a
10 "good wife" would behave. Respondent became so upset he almost
11 ran the car off the freeway. My cheek was sore for the next
12 few days.

13 That on September 17, 1977 Respondent became very angry
14 with me. He threw me up against the refrigerator, grabbed
15 me around the neck and started choking me. At this time he
16 yelled that he wished I was dead. This incident occurred in
17 front of our minor child, BRIAN.

18 That the above-mentioned incidents of violence are not
19 the only ones Respondent has displayed against me. This
20 kind of violence has occurred for the past four years. When
21 Respondent becomes violent against me I fear for my life. I
22 also fear for the well-being of my two children as I do not want
23 them to witness nor be hurt by these attacks. I still love
24 Respondent but strongly feel that without some marital counseling
25 our marriage will not last.

26 That if Respondent is not restrained and enjoined from
27 annoying, molesting, attacking, striking, battering or harrassing
28

1 me he will continue to do so. These continued attacks will
2 lead to the break up of our marriage.

3 I declare under penalty of perjury that the foregoing
4 is true and correct.

5 Executed this ____ day of _____, 19__, in
6 San Diego, California.

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10 _____
11 JANE DOE, Petitioner
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

In re the marriage of)	
	)	CONCILIATION COURT
Petitioner:	)	NO. _____
)	
and	)	ORDER GRANTING TEMPORARY
	)	RESTRAINING ORDERS AND
Respondent:	)	RE COUNSELING
_____)	

The Conciliation Court having been petitioned by
_____ to provide means toward an
amicable settlement of the parties' domestic controversy and
to provide protection for Petitioner and the children in the
household during the pendency of this matter, and good cause
having been shown, pursuant to Sections 1760-1769 and Section
527, California Code of Civil Procedure,

IT IS HEREBY ORDERED: That the Respondent shall be
restrained and enjoined from annoying, molesting, attacking,
striking, battering or harassing the Petitioner and other
household members.

/ / /
/ / /
/ / /

1 IT IS FURTHER ORDERED: That both parties in this
2 matter shall appear for counseling in the offices of the
3 Conciliation Court, Suite 1301, Charter Oil Building,
4 110 West "C" Street, San Diego, California, 92101, on _____

5 _____ at _____ M.
6

7 IT IS SO ORDERED
8

9 DATED: _____
10

JUDGE OF THE CONCILIATION COURT
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12 _____
13 Court Counselor
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NORBERT FORENTRUND

SUPERVISING JUDGE
BYRON F. LINDSLEY
SUPERVISING JUDGE

The Conciliation Court

MARRIAGE AND FAMILY COUNSELING SERVICES

SUPERIOR COURT - COUNTY OF SAN DIEGO

SUITE 1301, CHARTER OIL BLDG.

110 WEST C STREET

SAN DIEGO, CALIFORNIA 92101

236-2681

MURRAY BLOOM
DIRECTOR
COUNSELING SERVICES

ASSOCIATE COUNSELORS
LEO L. KORAN
EVELYN SPALDING
RUTH ROTH

Dear

By now you have been served an order signed by the Judge of the Conciliation Court restraining you from committing any acts of violence upon your spouse and ordering you to appear in the Conciliation Court counseling offices.

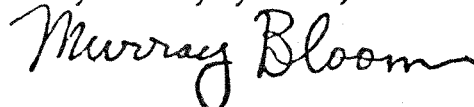
The purpose of the Conciliation Court's Domestic Violence Program is to provide families with the opportunity to work on their problems constructively rather than committing acts of violence in their frustration and/or inability to deal with these problems.

We understand that the reasons Mr./Mrs. has petitioned the Conciliation Court for services include his/her desire to work toward a mutually acceptable resolution of the problems and hopefully preserve the marriage. During your conference in the Conciliation Court, you will meet with a Family Counselor who is concerned with providing both of you the opportunity to express your feelings and constructively work at developing a settlement to this controversy that has caused unhappiness and violence that has been reported to the Court in this matter.

We look forward to seeing you as ordered and hope that you will cooperate in the Court's efforts to avoid any further family disruption or contempt citation against you.

If you have any questions prior to the scheduled conference, please feel free to call the Conciliation Court.

Very truly yours,



MURRAY BLOOM
Director Counseling Services

MB:lr

ADDENDUM C

APPENDIX D

PROPOSED FORMS

Name, Address and Telephone
Number of Attorney(s)

Space Below for Use of
Court Clerk Only

Attorney(s) for _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

In re

Petitioner:

and

Respondent:

)
)
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)
)

CASE NO.

PETITION AND DECLARATION FOR
TEMPORARY RESTRAINING ORDER
PURSUANT TO CCP 527(b)

DECLARATION

1. I, _____, live in the County of _____,
State of California.
2. (Check applicable line):
____ The Respondent (the party against whom I am seeking these orders)
and I are married.
____ The Respondent and I are living together.
____ The Respondent and I lived together until the date of the below-
described facts.
____ Other (state facts):
3. The Respondent has committed a past act of actual violence upon me
on the dates indicated in that he/she (state facts-indicate most
recent incident):
4. I need the assistance of a court order because:
5. I request the following orders of the court for the reasons indicated
(check appropriate line(s) and fill in spaces):

____ That the respondent be prohibited from threatening, harassing,
striking, following, or otherwise disturbing me or anyone under
my control and custody because:

____ That the Respondent be ordered to leave our dwelling, located at
_____, California, within _____ hours
from the time these orders are served, taking only sufficient
clothing and personal effects for the duration of these orders
because:

____ That the Respondent be ordered to stay THREE HUNDRED (300) YARDS
away from each of the following places: (check line(s))

____ My residence, located at _____

____ My place of employment located at _____

____ Other (specify) _____

because:

____ That I be granted temporary custody and control of our children:

Name

Birthdate

Age

subject to the following visitation rights to the Respondent:

____ None

____ As follows (specify)

____ That I be allowed exclusive possession and use of the following items (specify, i.e., car, etc.):

because:

6. In support of these orders, I further declare that:
7. I have the following actions pending with the courts involving my family: () Dissolution of Marriage/Legal Separation; () Juvenile Matter; () Petition for Conciliation; () Other: _____
8. The name and address of the appropriate law enforcement agency or agencies with jurisdiction to enforce these orders is as follows:

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration is executed this _____ day of _____, 19____, at _____, California.

(Signature)

(Type/Print Name)

THIS ORDER EXPIRES _____

Space Below for Use of
Court Clerk Only

Name, Address and Telephone
Number of Attorney(s)

Attorney(s) for _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

In re)
) CASE NO.
Petitioner:)
) ORDER UPON APPLICATION FOR
and) ORDERS PURSUANT TO CCP 527(b)/
) NOTICE TO APPEAR
Respondent:)

TO: _____
Respondent and Name

The Petitioner has requested that certain restraining orders be issued against you, pursuant to California Code of Civil Procedure Section 527(b).

☐ A hearing has been set for (Date) _____ at _____ m.
in the above-entitled court, located at _____,
Department/Room No. _____. You, with or without counsel, have
the right to appear at said time and place and oppose the issuance of
the orders requested.

☐ Pending the hearing, the Court, upon reading the Petition and
Declaration of the Petitioner, has issued the restraining orders
indicated below. These orders will expire on the date of the
hearing unless renewed by further court order. Failure to
attend the hearing may result in these orders being continued
against you.

☐ A hearing was held on (Date) _____ to consider
Petitioner's request for the issuance/extension of restraining orders
against you pursuant to CCP 527(b). The Court finds you were given
sufficient notice and therefore issues the orders indicated below.
These orders are effective for thirty (30) days, unless renewed by
further court order.

ANY WILLFUL VIOLATION OF THESE ORDERS SHALL BE DEEMED A MISDEMEANOR IN
VIOLATION OF PENAL CODE SECTION 166(4) AND/OR CODE OF CIVIL PROCEDURE
SECTION 527(b).

IT IS HEREBY ORDERED THAT:

1. Respondent is restrained and enjoined from threatening, harassing,
striking, following, or otherwise disturbing Petitioner or any
person under the care, custody or control of Petitioner in any
manner whatsoever.
2. Respondent shall leave the parties' dwelling located at _____
_____, California, within _____ hours from
the time of service of these orders, taking only sufficient clothing
and personal effects for the duration of these orders and shall not
remove any other items or re-enter such dwelling during the duration
of these orders.

- ____ 3. Respondent is enjoined and restrained from going within THREE HUNDRED (300) YARDS away from each of the following places:
() Petitioner's residence located at _____
() Petitioner's place of employment located at _____
() Other _____
- ____ 4. Temporary care, custody and control of the following minor children of the parties shall remain with the Petitioner:

<u>Name</u>	<u>Birthdate</u>	<u>Age</u>
-------------	------------------	------------
- subject to the following visitation rights to the Respondent:
- ____ 5. The court further orders that Petitioner be granted exclusive possession of:
- ____ 6. The court further orders
- ____ 7. The court refers this order for enforcement by all peace officers in the State of California. The orders shall be filed with the _____ Police Department.

Notice to Petitioner: These restraining orders must be personally served on the respondent to be effective. If a hearing date has been set, the orders must be served on the Respondent at least _____ days prior to the hearing. Unless you appear on the date of the hearing, the orders will terminate at that time.

____ The County Clerk is ordered to notify the appropriate law enforcement agency of the above orders.

____ The Petitioner is ordered to notify the appropriate law enforcement agency of the above orders.

DATED:

JUDGE OF THE SUPERIOR COURT

Name, Address and Telephone
Number of Attorney(s)

Space Below for Use of
Court Clerk Only

Attorney(s) for _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

In re	)	CASE NO.
)	
Petitioner:	)	RESPONSIVE DECLARATION
	)	RE NOTICE TO APPEAR
and	)	(CCP 527(b))
)	
Respondent:	)	Hearing Date:
_____	)	Department/Room No.:

I _____ consent to all of the injunctive or other orders
(do/do not)
requested.

Instead, I consent to only the following specified injunctive
or other orders:

In support of these requests, I declare as follows:

I declare under penalty of perjury that the foregoing, including
any attachments, is true and correct and that this declaration was
executed on _____ at _____, California.

(Signature)

(Type/Print Name)

THIS ORDER EXPIRES _____

space below for use of
Court Clerk Only

Name, Address and Telephone
Number of Attorney(s)

Attorney(s) for _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

In re)	
	)	CASE NO.
Petitioner:)	
	)	ORDER TO SHOW CAUSE
and	)	( ) Application for Order
	)	( ) Restraining Orders
Respondent:	)	( ) Child Support () Child Custody
	)	( ) Visitation () Support
	)	( ) Monetary Loss Reimbursement
	)	( ) Payment of Debts () Attorneys Fees
	)	( ) Court Costs () Counselling
	)	( ) Other (Specify):

TO: _____
Respondent and Name

YOU ARE ORDERED TO APPEAR IN THIS COURT on (Date) _____
at _____ .m. in Department/Room No. _____ located at _____

to give any legal reason why the orders sought in the Application for Order and Supporting Declaration should not be granted as requested by Petitioner (Name):

Pending the hearing, the Court (upon reading the Application for Order and Supporting Declaration has issued the restraining orders indicated below. These orders will expire on the date of the hearing unless renewed by further court order. Failure to attend the hearing may result in these orders being continued against you.

ANY WILLFUL VIOLATION OF THESE ORDERS SHALL BE DEEMED A MISDEMEANOR IN VIOLATION OF PENAL CODE SECTION 166(4) AND/OR CODE OF CIVIL PROCEDURE

IT IS HEREBY ORDERED THAT:

- ___ 1. Respondent is restrained and enjoined from threatening, harassing, striking, following, or otherwise disturbing Petitioner or any person under the care, custody or control of Petitioner in any manner whatsoever.
- ___ 2. Respondent shall leave the parties' dwelling located at _____, California, within _____ hours from the time of service of these orders, taking only sufficient clothing and personal effects for the duration of these orders and shall not remove any other items or re-enter such dwelling during the duration of these orders.

____ 3. Respondent is enjoined and restrained from going within THREE HUNDRED (300) YARDS away from each of the following places:
() Petitioner's residence located at _____
() Petitioner's place of employment located at _____
() Other _____

____ 4. Temporary care, custody and control of the following minor children of the parties shall remain with the Petitioner:

<u>Name</u>	<u>Birthdate</u>	<u>Age</u>
-------------	------------------	------------

subject to the following visitation rights to the Respondent:

____ 5. The court further orders that Petitioner be granted exclusive possession of:

____ 6. The court further orders

____ 7. The court refers this order for enforcement by all peace officers in the State of California. The orders shall be filed with the _____ Police Department.

____ 8. The Petitioner shall have the Respondent served with a copy of this Order to Show Cause and the Application for Order and Supporting Declaration _____ days before the hearing. The restraining orders must be personally served on the respondent to be effective. Unless you appear on the date of the hearing, the orders will terminate at that time.

____ The County Clerk is ordered to notify the appropriate law enforcement agency of the above orders.

____ The Petitioner is ordered to notify the appropriate law enforcement agency of the above orders.

DATED:

JUDGE OF THE SUPERIOR COURT

1. I, _____, live in the County of _____,
State of California.

2. (Check applicable line):

_____ The Respondent (the party against whom I am seeking these orders)
and I are married.

_____ The Respondent and I are living together.

_____ The Respondent and I lived together until the date of the below-
described facts.

_____ Other (state facts):

3. The Respondent has abused, harrassed, and/or committed an actual act
of violence upon me in that he/she (state facts-indicate most recent
incident):

4. I request the following orders of the court

a. Restraining Orders

_____ That the respondent be prohibited from threatening, harassing,
striking, following, or otherwise disturbing me or anyone under
my control and custody because:

_____ That the Respondent be ordered to leave our dwelling, located at
_____, California, within _____ hours
from the time these orders are served, taking only sufficient
clothing and personal effects for the duration of these orders
because:

_____ That the Respondent be ordered to stay THREE HUNDRED (300) YARDS
away from each of the following places: (check line(s))

_____ My residence, located at _____

_____ My place of employment located at _____

_____ Other (specify) _____

because:

_____ That I be granted temporary custody and control of our children:

Name

Birthdate

Age

subject to the following visitation rights to the Respondent:

_____ None

_____ As follows (specify)

_____ That I be allowed exclusive possession and use of the following
items (specify, i.e., car, etc.):

because:

_____ (Other-specify)

and that these orders be issued () immediately
() at the time of hearing
In support of these orders, I further declare that:

I have the following actions pending with the courts involving my family: () Dissolution of Marriage/Legal Separation; () Juvenile Matter; () Petition for Conciliation; () Other: _____

The name and address of the appropriate law enforcement agency or agencies with jurisdiction to enforce these orders is as follows:

- b. Child support
Name, Birthdate, Age Monthly support requested
\$
- c. Spousal support per month: \$
- d. Respondent pay the following encumbrances/liens/debts:

<u>Creditor</u>	<u>Monthly payment</u>	<u>Total Amount Owed</u>
-----------------	------------------------	--------------------------
- e. Respondent reimburse me for the following monetary losses:
(1) Medical expenses: \$
(2) Loss of earnings: \$
(3) Other (lodging, moving expenses, etc.-specify, including amount)
- f. Attorney's fees: \$
Court costs: \$
- g. Counselling as follows:
- h. Other

I declare under penalty of perjury that the foregoing, including any attachment, is true and correct and that this declaration is executed on (Date) _____ at (Place) _____, California.

(Signature)
(Type/Print Name)

APPENDIX E

CALLS FOR HELP

- A. Telephone calls to Battered Women's Project
- B. Telephone calls to Conciliation Court
Domestic Violence Program
- C. Telephone calls to WOMA

These tables give some indication of the great numbers of battered persons seeking help. Hotlines cost money to run and many of the groups and organizations assisting victims of domestic violence simply do not have the funds to run a full time, twenty-four hour hotline. Hotlines generally service urban areas, leaving rural areas without any readily available source of help and information.

This table represents a breakdown of the first 800 telephone calls made to the Battered Women's Project of San Diego County between October 1, 1977 and May 31, 1978.

Table 28: Rate of Calls Per Client (Total population: 800 clients)

<u>TYPE OF CALL</u>	<u>NUMBER OF CLIENTS</u>	<u>PERCENTAGE</u>
Only 1 call	302	38%
2 calls	263	33%
3 calls	98	12%
4 calls	48	6%
5 - 10 calls	72	9%
11 - 17 calls	17	2%
TOTAL	800	100%

Comments: Fairly careful records were kept on the number of client calls; however, due to the heavy flow of telephone communication, some of the returning calls may not have been recorded. Even so, it appears that 61% of our clients called more than once. This verifies the need for continuous support and availability of counselors over a long period of time for individual battered women. Often the initial conversation plants an idea that the client, with continuous encouragement, may carry out months later.

An explanation of why 39% of our clients called only once is that their needs were either met in that first conversation (e.g. legal referral, counseling, welfare information, etc.), or that they were not ready to do anything about their situation at that time.

It is also clear that for almost half of our clients, the battering has not been an isolated occurrence. Many have endured this trauma on a day by day or weekly basis for several years. There seems to be no correlation between the duration of the battering situation and the willingness of the victim to secure help for herself. However, more research is needed here.

This table represents telephone calls made to the Conciliation Court Domestic Violence Program, San Diego County.

DOMESTIC VIOLENCE PROGRAM - August 18, 1977 to August 31, 1978

REFERRALS: 135

August, 1977	3	February 1978	6
Sept	6	March	10
Oct	19	April	8
Nov	13	May	9
Dec	19	June	5
January 1978	18	July	8
		Aug	11

SOURCES:

Legal Aid	17	Publicity	2
Attorneys	25	Courthouse Info Desk	12
District Atty	2	Battered Women	18
City Attorney	3	Welfare	5
Police	8	Family Service	1
Word of Mouth	31	Chicano Federation	2
Courts	3	Guiding Hands	1
Legal Clinic	1	Navy counselor	2
CMH	1	Phone Book	1

CASES ACCEPTED: 54

Average length of marriage	6.5 years
Average education	10.5 years
No. of children per family	2.5
Average income	\$13,000

This table represents telephone calls made to WOMA, San Jose, California by battered women between July 1, 1977 and June 31, 1978.

Total number of clients	1544
a) battered women:	920
b) non-battered women	469
c) men	13

Strictly informational and referral calls: 1083
(between 10/1/77 - 6/31/78)

After-office hour hotline calls: 985
(since it's inception,
9/1/77 - 6/31/78)

APPENDIX F

THE FACTS ABOUT DOMESTIC VIOLENCE

Prepared by the California Coalition Against Domestic Violence

April 1977

THE FACTS ABOUT DOMESTIC VIOLENCE

Prepared by the California Coalition Against Domestic Violence

April 1977

DOMESTIC VIOLENCE IS A REALITY

- The FBI and other law enforcement experts report that domestic violence is the most common and underreported crime in the U.S. A conservative estimate puts the number of battered women in this country alone at well over one million. (Durbin, 1974)
- A random sample of U.S. households uncovered the fact that 37% of the families had experienced at least one incident of domestic battery; 12% reported that violence was a regular occurrence. (Gelles, 1972)
- Most police departments do not keep records on domestic battery. The Oakland Police Department reported, however, that in the first half of 1970, their officers responded to over 16,000 family disturbance calls.

DOMESTIC VIOLENCE CAN LEAD TO MURDER

- In a Michigan study, battered women reported that the beatings, once begun, tended to escalate both in intensity and frequency. (Eisenberg and Micklow, 1974)
- A Kansas City study indicates that in 85% of all family homicides, police had been called at least once before and 50% of the time, they had been called five or more times prior to the murder. (KCPD, 1971)
- According to FBI statistics, 1/3 of all female homicide victims were killed by their husbands. (1971)
- Domestic Homicide, that is, the murder of one family member by another accounts for one-quarter to a third of all homicides. (FBI Uniform Crime Reports)
- In California in 1971, 8.7 per cent male homicide victims were murdered by their wives, while 32.8 per cent of female homicide victims were murdered by their husbands. (California Homicides, 1971)

DOMESTIC VIOLENCE KILLS POLICE

- 28% of assaults on police officers, and over 20% of police deaths occur while officers were intervening in family fights. (FBI, 1974)

- In Sacramento, 1/3 of police officer deaths occur during domestic disturbance calls.

DOMESTIC VIOLENCE HARMS CHILDREN

- Children who witness violence are more likely to be violent with their own future spouses. (Gelles, 1972; Gifford, 1975)
- Data from England indicate that 56% of wife beaters and 37% of battered women abuse their children.

DOMESTIC VIOLENCE AFFECTS RICH AND POOR IN THE CITY AND COUNTRY

- Studies in New York, Virginia, and Connecticut show that levels of domestic violence are similar in wealthy and low-income neighborhoods. (Peterson, 1972; Bard, 1971)
- Police officers in rural areas report that domestic violence calls rank second in number only to auto accident calls.

BATTERED WOMEN NEED EMERGENCY HOUSING

- Many battered women do not have ready access to funds to obtain a hotel room or rent an apartment. Seeking refuge with friends or relatives becomes difficult after the third or fourth time, particularly when small children are involved.
- Welfare assistance, whether AFDC or General Relief, is not available until a woman has actually established a new residence apart from the "support" of an abusive mate.
- Women are often trapped in a violent home by their own fears of being pursued or more severely beaten or by economic and psychological dependance, or because they have nowhere to go. (Martin, 1976; Gelles, 1972)

APPENDIX G

Excerpted from:

A PRELIMINARY STUDY OF WIFE-BEATING

IN SAN DIEGO COUNTY:

BATTERED WOMEN'S PROJECT 1977-1978

A PRELIMINARY STUDY OF WIFE-BEATING
IN SAN DIEGO COUNTY:
BATTERED WOMEN'S PROJECT 1977-1978

In San Diego it has been reported that in 1977 there were at least fifteen homicides connected with domestic violence, and 500 weapons were confiscated during family disputes.¹ Yet these cases do not begin to reflect the actual number of people harmed in domestic situations. At the present time, neither the police department nor the hospitals of San Diego County are keeping accurate records on the incidence of family violence. In the initial stages of our project, an attempt was made to enlist the cooperation of several agencies in obtaining data on the number of abuse cases they encountered over a set period of time.

Although many agencies were willing to help in obtaining this information, due to our limited funds, time, personnel, and heavy load of clients, we were unable to complete this survey. With the exception of Balboa Hospital and the Provost Marshall's Office at Camp Pendleton (see Chapter IX on Military), reliable statistics on the over-all rate of battering in the county could not be secured. However, a previous study by Spezeski and Warner (1978) was conducted in 1977 to help determine the incidence of spouse assault that was reported in San Diego.² This investigation drew conclusions based on an estimate of the cases that a sample of agency personnel could recall. It was extremely helpful in uncovering the attitudes of service workers towards battered women and the gaps that existed in service delivery. However, it was not a reliable indicator of incidence of cases since it was based on secondhand information.

Due to the difficulty in gathering such county-wide statistics on the rate of battered women, it seemed more important to concentrate our research efforts on the in-depth needs of those clients who called us for help. Although the statistical data we have presented is not conclusive, in the light of what we already know through previous research in other parts of the country, our findings are extremely persuasive.

Objectives

The following survey was conducted to help determine the actual number of physically abused women in San Diego County who sought help through the Battered Women's Project (BWP) during the first eight months of its operation. More specifically, statistics were accumulated on the frequency and nature of the battering syndrome with special attention given to the characteristics of the populations affected, and both their immediate and long-term needs.

Methodology

Our sample included the first 800 female clients living in San Diego County who called us between October 1, 1977, and May 31, 1978. All these women had been or were currently living in violent homes where they were beaten by their male cohabitators. The sample included clients from different ethnic and economic backgrounds who were at varying stages in the process of coping with, or extricating themselves from the situation. In no way is this sample a reflection of the actual number of women being battered in the county. It represents those women who were lucky enough to hear about our program and who were attempting to seek alternatives and solutions to their problem. Many more women remain in their homes still isolated and too frightened to try to find a way out.

Hot-line intake questionnaires (see Appendix) were used to gather the information and each of these client cards was continuously updated. The hot-line puts the client in immediate and direct contact with a counselor 24 hours a day. During our regular office hours, this hot-line utilizes four phones. Some additional data were also collected through a random sample of 50 in-depth case studies which provided more detailed personal histories.

Due to the critical and sensitive nature of many of these calls, it was often difficult or inappropriate to ask certain questions. Furthermore, not all of the respondents reported every aspect of the violent confrontations, while other either avoided or refused to answer our questions. Thus, for each specific question, there are varying numbers of responses or what we have called the "sample or percentage of total population of clients." These samples may be somewhat biased due to the fact that not all questions were answered by every client.

Results of the Research

At the present time, neither the police nor hospital records include battered women as a separate category of assault victims, therefore, no data is available on the overall incidence of wife abuse in San Diego. The following

summary of specific results is presented here for easy reference relative to the more general statements included in the following chapters. It should be noted that the figures given are conservative, since they represent data limited to those victims who sought help through our hotline.

CHARACTERISTICS OF FEMALE CLIENTS

Table 1: Age of the Female Victim (Sample: 611 or 76% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
17 - 20 years	63	10%
21 - 25 years	164	27%
26 - 30 years	138	23%
31 - 40 years	134	22%
41 - 50 years	66	11%
51 - 60 years	37	6%
61 years and over	9	1%
TOTAL	611	100%

Comments: From this sample, it appears that the majority (72%) of our clients are between the ages of 21-40 years, although no adult age group is immune. Reasons why older women do not call as often may include such things as: their greater financial dependence, a more traditional view of the woman's role, and a deeper sense of helplessness due to years of abuse which prevents them from seeking help.

Table 2: Ethnic Background of the Woman (Sample: 642 or 80% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Caucasian	410	64%
Black	105	16%
Mexican/Chicano	95	15%
Asian	28	4%
American Indian	4	1%
TOTAL	642	100%

Comments: This data shows the percentage of individuals from the various ethnic groups who requested help from us. It in no way reflects the average number of women being battered in a particular ethnic group. Because of our project's geographical location, limited outreach services, and lack of extensive publicity, plus the cultural taboos preventing some clients from seeking help, it was difficult to reach as large a number of minority clients as we would have preferred. Nevertheless, the percentage of minority women seeking our help closely resembles the percentage of minority members in San Diego's population as a whole.

Table 3: First or Native Language of the Woman (Sample: 586 or 74% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
English	493	84%
Spanish	65	11%
Other	28	5%
TOTAL	586	100%

Comments: Most of our clients speak English, including some from the Spanish-speaking population. Most of the Asian clients who are recent immigrants speak little or no English.

Table 4: Highest Level of Education of the Woman (Sample: 182 or 23% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Less than High School	5	3%
Some High School	57	31%
Graduated High School	48	26%
High School plus technical courses	7	4%
Some College	59	32%
Graduated College	3	2%
Some Graduate Study	3	2%
TOTAL	182	100%

Comments: It is interesting to note that the highest level of education attained by 57% of our clients was some or all years of High School. Those who reached an educational level of some college, received a college degree, or continued in graduate school totaled 36%. Fifty-seven percent of our clients have attended or graduated from High School, and 36% have some college or graduate school training.

Table 5: Marital Status of the Woman (Sample: 731 or 91% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Married	542	74%
Divorced or single	146	20%
Legally separated	40	5%
Widowed	3	1%
TOTAL	731	100%

Comments: This indicates that the most common type of relationship involving battering is that of legal marriage. It is significant, however, that 20% of our clients are not married.

Table 6: Length of Marriage (Sample: 382 or 48% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Up to 1 year	80	21%
2 - 4 years	102	27%
5 - 7 years	68	18%
8 - 10 years	36	9%
11 - 13 years	23	6%
14 - 20 years	34	9%
20+ years	39	10%
TOTAL	382	100%

Comments: Although 48% of our clients have been married up to 4 years, 27% have been married from 5 - 10 years, and 25% have been married for 11 years or more. Many of our clients have remained in violent homes for a great many years, with battering becoming a way of life.

NATURE OF THE VIOLENCE

Table 7: Attacker's Relationship to the Victim (Sample: 720 or 90% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Husband	572	80%
Ex-husband	22	3%
Boyfriend	126	17%
TOTAL	720	100%

Comments: A predictably high percentage of abuse occurs within the marital relationship. Where couples are living together and boyfriends are involved, it is usually easier for a woman to extricate herself from the situation.

Table 8: Use or Threatened Use of Weapons

A. Guns or Knives (Sample: 229 or 29% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	59	26%
No	170	74%
TOTAL	229	100%

B. Household Objects (Sample: 230 or 29% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	45	20%
No	185	80%
TOTAL	230	100%

Comments: In addition to the use of weapons, a full range of injuries was reported by our clients including: rape, bruises, psychological trauma, fractured ribs, concussions, abrasions, contusions, and in one case, paralysis. Although the need for hospitalization was often great, many women did not seek such medical treatment.

Table 9: Number of Women Beaten While Pregnant (Sample:
204 or 26% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	85	42%
No	119	58%
TOTAL	204	100%

Comments: Although this information was given in a sample of only 26% of our total population, it verifies previous data*, and it can thus be assumed that battering during pregnancy is common in violent homes.

*Roy, Maria ed. *Battered Women: A Psychological Study of Domestic Violence*. San Francisco: Van Nostrand Reinhold Co. 1977, p. 42. According to Roy's study "those citing pregnancy as a precipitant to violence, many reported an unplanned pregnancy put a great strain on the relationship. Many indicated that the husbands were jealous toward the unborn newcomer and resented the intrusion. Pregnancy, occurring in a relationship already troubled by sexual problems, unemployment and deep-rooted personal problems, caused additional frustration and resulted in explosive bursts of anger and physical abuse."

ECONOMIC AND EMPLOYMENT STATUS OF THE COUPLE

Table 10: Total Income of Members of the Household
(Sample: 335 or 42% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Under \$5,000 per year	187	56%
Between \$5,000 - \$10,000 per year	91	27%
Between \$10,000 - \$20,000 per year	49	15%
Over \$20,000 per year	8	2%
TOTAL	335	100%

Comments: This information illustrates the fact that the abuse of women occurs at all economic levels. Although 56% of our clients come from low-income families, it is probably more a reflection of whom our project appeals to rather than a real difference in the rate of battering among economic groups. A large percentage (See Table 26) of our clients are referred by social service agencies and the police. Since women in higher economic brackets do not call these service groups as frequently, we might presume that they feel more of a stigma attached to calling a hot-line. If they seek help at all, it would probably be with their own private physician, and when searching for shelter, their financial resources would enable them to go to a motel.

Table 11: Current Employment Status of the Women (Sample: 615 or 77% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Employed	256	42%
Unemployed	359	58%
TOTAL	615	100%

Comments: Over half of our clients are currently unemployed and therefore without an independent source of income. This makes leaving their violent homes that much more difficult. On the other hand, many of these unemployed women have worked in the past, and some of the employed women are actually supporting unemployed husbands. Thus, economic reasons given for not leaving are sometimes questionable.

Table 12: Employment Status of the Men (Sample: 490 or 61% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Employed	356	73%
Unemployed	134	27%
TOTAL	490	100%

Comments: The unemployment rate in San Diego County is currently approximately 7%. According to our data, the unemployment rate of the men involved in the battering of our clients is almost four times that of the general population.

Table 13: Occupation of the Abuser (Sample: 379 or 47% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Unskilled	28	7%
Skilled	178	47%
Professional/Administrative	55	15%
Navy (both skilled and professional) active: 100, retired/disabled: 18	118	31%
TOTAL	379	100%

Comments: Once again, our data demonstrates that the men who batter come from all social strata. Our project has received a high percentage of calls involving Navy men, but this is not too surprising given the high density of military personnel in San Diego. Our smaller percentage (15%) of professional men is probably due more to the fact that private physicians were called by the wives of professionals (rather than our hot-line), and not to any real differences in the incidence of battering between groups.*

*In a study conducted in Bergen County, N.J. on battered women where private physicians were asked to provide the principle source of information on local victims of spouse abuse, their data, although biased by this source, showed that half of their sample of "attackers" would be categorized as professional or executive. Fassberg, Evelyn. *Crimes of Violence Against Women: Rape/Battered Women*. Bergen County Advisory Commission on the Status of Women, Spring 1977. Bergen County, N.J., unpublished.

PERSONAL HISTORY OF MAN AND WOMAN

Table 14: Criminal Record of the Man (Sample: 219 or 27% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	103	47%
No	116	53%
TOTAL	219	100%

Comments: For purposes of this study, we defined criminal record as a serious misdemeanor or felony. Not included were traffic violations or drunken driving. Almost half of our abusers have criminal records, (including aggravated assault, drug charges, theft, etc.) which indicates a greater tendency than that of the general population for entanglements with the law.

Table 15: Criminal Record of the Woman (Sample: 153 or 19% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	20	13%
No	133	87%
TOTAL	153	100%

Comments: A criminal record has again been defined as a serious misdemeanor or felony. Since the number of responses to this question was so small, the results may be biased.

*Table 16: Number of Cases Reporting Alcohol Problems
 (Total population: 800 clients)

	<u>NUMBER OF CASES</u>
Alcohol (Problem for the woman)	68
Alcohol (Problem for the man)	326
TOTAL	394

Comments: Our figures on alcohol as a problem in violent homes is inconclusive. Therefore, we are reporting only the number of clients who stated that alcohol was a problem for either them or their husbands. This information had to be based on the woman's statement only, and therefore could contain a certain bias. Although it is clear that the men have a higher incidence of drinking problems than the women, from our case histories these figures are limited at best.

*Conclusions from the tables that are marked with an asterisk are inconclusive because the data is incomplete. By this, we mean that our responses, reported only as number of cases, not percentages, encompass only those clients who volunteered this information. The rest of our total sample either had no problem or failed to respond.

FAMILY BACKGROUND OF THE MAN AND THE WOMAN

Table 17: Violence Between Abuser's Parents (Sample: 226 or 28% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	129	57%
No	97	43%
TOTAL	226	100%

Comments: From our statistics, we note that more than half of the abusers were children of violent parents. Although this data may be somewhat biased since it is derived from the woman's reconstruction of her husband's/boyfriend's past, most women based their information on what their men told them over the years, and from information given by mothers and fathers-in-law. In spite of these shortcomings, the evidence suggests that those men who beat their spouses had witnessed violence between their own parents. These findings corroborate what has previously been established by other investigators.

Table 18: Violence Between Battered Woman's Parents (Sample: 232 or 29% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	63	27%
No	169	73%
TOTAL	232	100%

Comments: Our data suggest a less significant percentage of women, as compared to the men, were exposed as children to violence between their parents. However, previous evidence (Gelles 1974) indicates that women who observed conjugal violence in their families of orientation were likely to be victims of marital violence in their families of procreation.³

Table 19: Problem Drinking with Either of Man's Parents
(Sample: 206 or 26% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Problem	105	51%
No problem	101	49%
TOTAL	206	100%

Comments: From our sample, it is clear that about half of the men who beat their spouses came from homes where at least one alcoholic parent resided. This factor undoubtedly influenced the stability of the family. That is to say, the parent's role as financial provider may have been in jeopardy or the alcoholism might be an indication of a deeper psychological disturbance on the part of the drinker. Although actual physical abuse may not have occurred between the parents, in all probability verbal abuse, and the tension this produced, would profoundly affect the child and how well he would cope in a relationship with his own spouse.

Table 20: Problem Drinking with Either of Women's Parents
(Sample: 226 or 28% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Problem	67	30%
No problem	159	70%
TOTAL	226	100%

Comments: An unexpectedly high percentage of our clients came from homes where alcohol was a problem for at least one parent. Assuming that alcohol abuse precipitated discord in these families, it probably had a severe effect on the woman's self-image, sense of helplessness, and fear of the drinking parent. It is not surprising that these women may have difficulty in their own marriage.

Table 21: Parental Abuse of the Male Abuser (Sample: 161 or 20% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	89	55%
No	72	45%
TOTAL	161	100%

Comments: This question refers to the abuse of the male batterer by one or the other of his parents. These figures indicate that a significant percentage of abusers were themselves beaten as children.

Table 22: Parental Abuse of Battered Woman (Sample: 145 or 18% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	42	29%
No	103	71%
TOTAL	145	100%

Comments: Our statistics show that almost one third of our clients experienced beatings as a child. This suggests that women who are battered in early childhood may be more likely to be abused in their married years.

EFFECTS OF FAMILY VIOLENCE ON THE CHILDREN

Table 23: Number of Children per Client (Sample: 704 or 88% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
No children	123	17%
1 child	190	27%
2 children	217	31%
3 children	90	13%
4 children	49	7%
5 or more children	35	5%
TOTAL	704	100%

Comments: Our data indicates that 83% of our clients have children. The presence of children is one of the main reasons given for a woman remaining with her abusing mate. Often these women are unprepared or unable to enter the job market, and have little or no money of their own to support their children if they leave the home, and sincerely believe that their children need a father.

Table 24: Child Observed the Beating (Sample: 274 or 34% of total)

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Yes	226	82%
No	48	18%
TOTAL	274	100%

Comments: The fact that the majority of our clients' children were witness to the attack certainly influences the roles they will choose to model themselves after when faced with handling anger as an adult. Furthermore, the majority of our clients reported an increase in psychological problems in their child as a result of living in this environment (e.g. bed-wetting, extreme sibling abuse, violent behavior with playmates, torture of animals, fear of men, etc.). However, the most significant effect on the children is that by being present during the abuse, they often become the victims or perpetrators of physical assault themselves.

*Table 25: Reported Cases of Child Abuse

Woman as abuser-	14 cases
Man as abuser-	84 cases
TOTAL	98 cases

Comments: The question of child abuse has a built-in bias since we were obligated to report all child abuse cases to the authorities and told our clients this from the beginning. Therefore, our figures are under-reported. However, it is clear that at least six times the number of abuse cases involve the man, rather than the woman. And more significantly, we found that 95% of the mothers did not report their husband for child abuse.

*For description of asterisk, refer to Table 16, page 133 of this report.

SOURCES OF HELP

Table 26: Outside Referral Sources (Sample: 574 or 72% of total)

First heard about BWP from:

	<u>NUMBER</u>	<u>PERCENTAGE</u>
Social Agencies	169	29%
Friends or relatives	107	19%
Police	94	16%
News Media (T.V. shows, radio, newspapers)	76	13%
Hospital	38	7%
Lawyer	15	3%
Doctor	15	3%
Military	18	3%
Telephone operators	10	2%
Other	32	5%
TOTAL	574	100%

Comments: It should be noted that our data shows only those groups that make the most referrals to our project. It tells us neither which group receives the most calls, nor what percentage of the calls are received but not referred by these groups.

There is a noticeable lack of police referrals considering the fact that they have estimated that a high percentage of their calls at night are for assault. Hospitals are also not referring all the clients they see, either because the crime goes undetected or no consistent procedure has been set up for referral in the emergency rooms.

Table 27: The Stated Needs of Our Clients (Sample: 727 or 91% of total)

It should be noted that these figures are not mutually exclusive, thus do not add up to 100%.

	NUMBER	PERCENTAGE
1. Client abused within <u>48 hours</u> of making call.	332	46%
2. Client has been <u>repeatedly</u> abused during the relationship.	314	43%
3. Caller wanted <u>shelter</u> .	181	25%
4. Caller wanted long-term <u>counseling</u> .	232	32%
5. Caller requests information about <u>welfare</u> .	48	7%
6. Caller wanted <u>legal</u> information.	280	39%
7. Caller needs <u>transportation</u> .	32	4%
8. Caller requested <u>police</u> assistance.	161	22%

Comments: It is apparent that almost half of our clients called shortly following the crisis. It is thus clear that a definite need exists for crisis-intervention counselors, who are skilled in dealing with the immediate problem and the emotional trauma of victims, as well as exploring long-range alternatives with them. It has been our experience that when clients are counseled immediately after the assault has occurred, they are more motivated to find solutions to this situation, and respond more favorably to counseling.

The small number of women requesting shelter can partially be explained by the fact that shelter, particularly for battered women, was not readily available. However, with the establishment of our new shelter, we already have accumulated a long waiting list of clients.

Some of the additional needs of clients that were not mentioned on our intake forms but are none the less important, include: child-care facilities, transportation, alcohol and drug counseling, budget advice, job training, peer support and rape counseling. Although

other professionals in the county offer services in these areas, they may be unaware of or "lump" the problem of wife abuse with other family problems. Battered women have distinct problems that are often unique to their situation, and thus require a certain expertise and sensitivity on the part of the agency personnel.

Table 28: Rate of Calls Per Client (Total population: 800 clients)

<u>TYPE OF CALL</u>	<u>NUMBER OF CLIENTS</u>	<u>PERCENTAGE</u>
Only 1 call	302	38%
2 calls	263	33%
3 calls	98	12%
4 calls	48	6%
5 - 10 calls	72	9%
11 - 17 calls	17	2%
TOTAL	800	100%

Comments: Fairly careful records were kept on the number of client calls; however, due to the heavy flow of telephone communication, some of the returning calls may not have been recorded. Even so, it appears that 61% of our clients called more than once. This verifies the need for continuous support and availability of counselors over a long period of time for individual battered women. Often the initial conversation plants an idea that the client, with continuous encouragement, may carry out months later.

An explanation of why 39% of our clients called only once is that their needs were either met in that first conversation (e.g. legal referral, counseling, welfare information, etc.), or that they were not ready to do anything about their situation at that time.

It is also clear that for almost half of our clients, the battering has not been an isolated occurrence. Many have endured this trauma on a day by day or weekly basis for several years. There seems to be no correlation between the duration of the battering situation and the willingness of the victim to secure help for herself. However, more research is needed here.

Tentative Conclusions:

Above all, our study verifies the need for increased services for battered women in San Diego County. By the end of our first year, the BWP will have received over 1,000 calls from violently abused women. Physical violence is not just the result of a unique group of pathological spouses, but is a widespread problem touching all ethnic minorities and classes of society.

Most importantly, wife-beating is not an isolated phenomena or a once-only occurrence. In an overwhelming number of cases, there is repeated and severe abuse often occurring in homes where alcohol, child abuse, and extreme stress have existed for an extended period of time. The presence of physical violence in so many of the abusers' childhood homes indicates the strong tendency for this form of violence to be *passed on from one generation to the next*. There is an important need to break this dangerous cycle by providing legal, psychological and economic assistance for battered women and their children that will enable them to escape this often life-threatening situation.

